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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 907.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES H. BERRY ET AL., AS THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF ARKANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED AUGUST 30, 1884.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Supreme Court of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Arkansas, before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between The St. Louis, Iron Mountain & Southern Railway Company, appellant, *vs.* James H. Berry *et als.*, as the Board of Railroad Commissioners of the State of Arkansas, appellees, wherein was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, a manifest error hath happened to the great damage of the said St. Louis, Iron Mountain and Southern Railway Company, as by its said complaint appears. We being willing that error, if any hath been, should be duly corrected and
2 full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 11th day of February, in the year of our Lord eighteen hundred and eighty-four, and of the Independence of the United States the one hundred and eighth year.

[SEAL.] RALPH L. GOODRICH,
Clerk of Circuit Court of the United States for the Eastern District of Arkansas.

3 Allowed Feb. 11th, 1884.

E. H. ENGLISH,
Chief Justice of the Supreme Court of the State of Arks.

[Endorsed:] St. L., I. M. & S. R'y Co. *vs.* J. H. Berry *et als.*, as State B'd R. R. Com'rs. Writ of error.

4 STATE OF ARKANSAS:

In the Supreme Court.

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, hereby certify that, in obedience to the mandate of the foregoing writ of error, I have made and certified a full, true, and complete transcript of the record and proceedings of said supreme court

in the case stated, except the briefs of counsel, which is hereto attached and sent to the Supreme Court of the United States, as in said writ is commanded.

In testimony whereof I hereto set my hand as clerk of said supreme court of the State of Arkansas and affix the seal of said court, at my office, in the city af Little Rock, this 10 day of June, A. D. 1884.

[SEAL.] L. E. BARBER, *Clerk.*

5 THE ST. LOUIS, I. M. & S. R'Y CO.
vs.
J. H. BERRY, Governor, *et al.*

The United States of America, greeting, to J. H. Berry, Governor, Jacob Frolich, sec't'y of State, & A. W. Files, auditor, as State Board of Railroad Commissioners:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Arkansas, wherein The Saint Louis, Iron Mountain & Southern Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elbert H. English, chief justice of the supreme court, this 8th day of March, A. D. 1884.

E. H. ENGLISH,
Chief Justice, &c.

Service of the above citation acknowledged this 8th day of March, 1884.

C. B. MOORE,
Attorney General of the State of Arkansas.

6 [Endorsed:] The St. L., I. M. & S. R'y Co. *vs.* J. H. Berry Gov., *et al.* Citation.

7 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, State of Arkansas, before the Hon. Elbert H. English, chief justice of the said supreme court, and the Hon. John R. Eakin and William W. Smith, justices of said court, at a term of said supreme court, begun and held on the 26th day of November, A. D. 1883, were the following proceedings in said supreme court, on the 2d day of February, A. D. 1884, a day of said term, in the case of—

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY, Plaintiff,

vs.

JAMES H. BERRY, as Governor, JAMES FROLICK, Secretary of State, and A. W. FILES, Auditor, as the Board of Railroad Commissioners for the State of Arkansas, Defendants.

Be it remembered that on the 25th day of November, A. D.
8 1883, the transcript of the record of the Pulaski chancery court was filed in the office of the clerk of the supreme court in said cause, which is as follows:

Transcript of Chancery Court.

STATE OF ARKANSAS, *Pulaski County:*

In the Pulaski Chancery Court.

Be it remembered that at a term of the Pulaski chancery court, begun and held at Little Rock, the seat of government of the State of Arkansas, on the third Monday in September, A. D. 1883—present, the Hon. D. W. Carroll, chancellor, presiding—among others, the following proceedings were had in said court on the 5th day of November, 1883, a day of said term, to wit:

ST. LOUIS, IRON MOUNTAIN and SOUTHERN RAILWAY, Plaintiff,

vs.

JAMES H. BERRY, as Governor, JACOB FROLICK, Secretary of State, and A. W. Files, Auditor, as the Board of Railroad Commissioners for the State of Arkansas, Defendants.

Filing Complaint, &c.

SATURDAY, *June 2d*, 1883.

ST. LOUIS, IRON MOUNTAIN and SOUTHERN RAILWAY COMPANY
vs.
9 JAMES H. BERRY, Governor, JACOB FROLICK, Secretary of State, and A. W. Files, Auditor, as the Board of Railroad Commissioners for the State, and Jacob Frolick, as Secretary of State. } 1645.

Comes the complainant, by J. M. Moore and Dodge and Johnson, Esqs., its solicitors, and files its bill of complaint against James H. Berry, Governor, Jacob Frolick, secretary of State, and A. W. Files, auditor, as the Board of Railroad Commissioners for the State, and against Jacob Frolick, as secretary of State, praying an order restraining said defendants, as the Board of Railroad Commissioners for the State, and said Jacob Frolick, as secretary of State, from proceeding to assess the railroad track, side track, switches, stations, improvements, rolling stock, and other fixtures and appurtenances of complainant's road for taxation, or from certifying the same to the clerks of the counties through which said road runs; and thereupon come the defendants, by attorney general, and waives the issuance or service of process upon them in said cause; whereup- it is ordered that

defendant be and appear in this court on the 6th day of June, 1883, and show cause, if any they can, why a restraining order should not issue against them as prayed, and in the meantime that they be restrained from proceeding to assess or certify said property to the clerks of the counties until the hearing of the said application.

10 *Complaint.*

In the Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN R'Y CO.

vs.

JAMES H. BERRY, Governor, JACOB FROLICK, Secretary of State, and A. W. FILES, Auditor of Public Accounts, as the Board of Railroad Commissioners for the State of Arkansas, and JACOB FROLICK, as Secretary of State.

Complainant represents that it is a corporation organized under the provisions of an act of the General Assembly, entitled "An act to incorporate the Cairo and Fulton Railroad Company," approved the 12th day of January, 1853, for the purpose of constructing, operating, and maintaining a railroad within this State.

That under the provisions of the tenth sections of its charter it consolidated with the St. Louis and Iron Mountain Railroad Company, a corporation organized and created under the laws of Missouri, whose road connected with the said Cairo and Fulton railroad at the line between said States, and assumed the corporate name of the St. Louis, Iron Mountain and Southern Railway Company, and on said day filed articles of consolidation in the office of the secretary of State. Complainant's charter is a public act, and is here referred to, and a copy of said articles of consolidation is herewith filed, marked Exhibit "A."

11 That by the provisions of the eleventh section of complainant's charter its capital stock and dividends are declared to be forever exempt from taxation, and its road, fixtures, and appurtenances until after it shall pay an interest of not less than ten per cent per annum. And it is further provided by the thirteenth section of complainant's charter, that it shall possess and enjoy all the rights, privileges, and immunities and franchises contained in the charter granted at the same session of the General Assembly to the Mississippi Valley Railroad Company, not restrictive or inconsistent with the provisions of complainant's charter.

That the Mississippi Valley Railroad Company was incorporated under the provisions of an act entitled "An act to incorporate the Mississippi Valley Railroad Company," approved the 12th of January, 1853. Refer[ence] is here made to said act, the same being a public act.

Section twenty-five of said act provides that the capital stock of said company and the dividends shall be exempt from taxation until a dividend of six per cent. is realized upon the capital stock; and the road, with all its fixtures and appurtenances, including work shops, warehouses, and vehicles of transportation, shall be exempt

from taxation for the period of twenty-five years from the completion of the road; and that no tax shall ever be levied on said
12 road or its fixtures which will reduce the dividends below ten per cent. per annum. And it is further provided in said acts that they shall be favorably construed in furtherance of the purpose and objects therein expressed.

Complainant represents that its road was completed on the 5th day of December, 1873; that it does not now and never had paid an interest of ten per cent. per annum, nor has any dividend ever been realized or declared on its capital stock.

Complainant further represents that defendants were constituted a board of railroad commissioners for the State under and by virtue of an act entitled "An act to revise and amend the revenue laws of Arkansas," approved the 31st day of March, 1883; and defendants, under the provisions of said act, have required complainant to file a statement of the length of its track, side tracks, switches, and turn-outs in each county, city, and town through which the same runs, and of all the improvements, stations, structures, rolling stock, and other fixtures and appurtenances of its road.

In compliance with said requirement, complainant filed said statement, and therewith filed a statement of its exemptions and a protest against the assessment of said property. Copies of said statement are herewith filed, marked Exhibit "B."

13 And complainant is advised and alleges that notwithstanding its objection the defendants, in disregard of its rights and of the exemptions conferred upon it by the aforesaid acts, are proceeding in the manner provided in said act to assess said property, constituting its road, fixtures, and appurtenances, and, unless they are restrained by the order of the court, will assess said property for taxation; and the said Jacob Frolick, as secretary of State, will certify said assessments to the clerks of the counties through which its road runs, for the purpose of having the same entered upon the tax-books, and complainant will be compelled to bring a large number of suits in order to restrain the clerks from entering said property on the books of their counties.

The premises considered, the complainant prays that the defendants be restrained during the pendency of this proceeding to assess the aforesaid property or any part thereof, or from certifying the same to the clerks of the counties, and upon the hearing that they, and their successors in office, be perpetually enjoined from assessing any of the aforesaid property, and for such other relief as complainant may in equity be entitled to.

DODGE AND JOHNSON
AND J. M. MOORE, *for Compl't.*

Filed June 2d, 1883. J. W. CALLAWAY, *Clerk.*

"A."

OFFICE OF ST. LOUIS AND IRON MOUNTAIN RAILROAD CO.,
ST. LOUIS, *April 30th*, 1874.

Board of Directors.

Extract of Proceedings of the Board of Directors of said Company at the above date.

1st. Resolved, That this company will enter into an agreement with the Cairo and Fulton Railroad Company for consolidating the St. Louis and Iron Mountain Railroad Company with the Cairo and Fulton Railroad Company on the basis recommended by the several committees of the railroad companies on this question, and which is recognized in the form of agreement submitted for execution.

2nd. Resolved further, That the president of this company be, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company at their meeting called to be holden on Friday, the first day of May ensuing, and that when said agreement is so approved in stockholders' meeting, he cause the same to be carried into effect by calling in certificates of stock in the old companies outstanding and having it exchanged for stock in the new company according to the terms of said agreement.

3d. Resolved, That the name of the new consolidated company shall be St. Louis, Iron Mountain and Southern Railway Company.

ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,
ST. LOUIS, *May 1st*, 1874.

Stockholders' Meeting.

Copy of Resolutions adopted at the Stockholders' Meeting of said Company on the above date.

Resolved, That the agreement executed on behalf of the St. Louis and Iron Mountain Railroad Company, of Missouri, by Thomas Allen, president of said company, under and by authority of a resolution of the board of directors of said company, and now here submitted for approval and adoption by the stockholders of this company, be, and the same is hereby, approved and adopted; and that the president and directors of this company are hereby directed to carry into effect the provisions thereof whenever said agreement shall have been executed by said Cairo and Fulton Railroad Company and approved by the stockholders of said company.

CAIRO AND FULTON RAILROAD COMPANY,
LITTLE ROCK, MONDAY, *May 4th*, 1874.

Directors' Meeting.

The following is an extract of proceedings of the board of directors of said company of the date aforesaid:

Agreement as to Consolidation.

1st. Resolved, That this company will enter into an agreement with the St. Louis and Iron Mountain Railroad Company for uniting and consolidating this company with said St. Louis and Iron Mountain Railroad Company, and for making joint stock of the two companies and forming one board of directors for the management of the affairs of said companies on the basis jointly recommended by the committees on consolidation, and embraced in the agreement executed by said St. Louis and Iron Mountain Railroad Company, and now here submitted for execution on the part of this company.

2nd. Resolved, further, That the president of the company be, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company, at the meeting called to be holden on Monday, the 4th day of May inst., or any other day thereafter, and when approved that the president cause the same to be carried into effect, and call in the certificates of stock in this company outstanding and exchange them for stock in the new company, according to the terms of the agreement.

17 CAIRO AND FULTON RAILROAD COMPANY,
MONDAY, *May 4th*, 1874.

Stockholders' Meeting.

Copy of resolutions adopted at the meeting of stockholders of said company on the above date.

Approval of Consolidation.

Resolved, That the agreement for consolidating the Cairo and Fulton Railroad Company with the St. Louis and Iron Mountain Railroad Company, which has been executed on behalf of this company by Thomas Allen, president, under and by authority of a resolution of the board of directors of said company, and now here submitted to this meeting for approval and adoption by the stockholders of this company, be, and the same is hereby, approved and adopted.

Agreement for Consolidation.

Memorandum of an agreement made and entered into this thirtieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, by and between "The St. Louis and Iron Mountain Railroad Company," a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the first part, and The Cairo and Fulton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Arkansas, party of the second part.

Whereas, the party of the first part owns and operates
18 a line of railroad extending from the city of St. Louis southward to the boundary-line between the States of Missouri and Arkansas, where it intersects the railroad of the party of the second part; it also owns and operates a line of railroad from Bismarck to Belmont, and also owns and operates a line

of railroad running from Poplar Bluff eastward to the Mississippi river, at a point opposite the mouth of the Ohio river, and a branch railroad from Mineral Point to Potosi, all in the State of Missouri. And the party of the second part owns and operates a line of railroad extending from the boundary-line between the States of Missouri and Arkansas, where it forms a junction with the line of railroad of the party of the first part, through the cities of Little Rock and Fulton to the town of Texarkana, upon the boundary-line between the States of Arkansas and Texas; and the said railroads form continuous and connecting lines of railroad with each other, so constructed as to admit the passage of burthen and passenger cars over each continuously, without change, break, or interruption;

And whereas the said parties are authorized, by the laws of the several States aforesaid, to consolidate their capital stock, franchises, and property together and become one corporation, and it is believed that such consolidation will be beneficial to the stockholders of each of said corporations and to the public:

Now, therefore, this agreement witnesseth that the parties
19 of the first and second parts hereto, by their respective boards of directors duly convened, have agreed, and do hereby agree, to merge and consolidate the capital stock, franchises, and property of the said two corporations so that the same shall become the capital stock, franchises, and property of one corporation; and for that purpose the said parties do hereby make and prescribe the following terms and conditions of such merger and consolidation, and the mode of carrying the same into effect:

ARTICLE I.

The name of the new corporation shall be "St. Louis, Iron Mountain and Southern Railway Company."

ARTICLE II.

SECTION 1. The directors of the said new corporation shall be thirteen in number, and the officers thereof shall consist of a president, one or more vice-presidents, a secretary, and a treasurer, and such other officers as may by the board of directors be deemed necessary.

All the directors shall be severally stockholders of the corporation, and qualified to vote for directors at the election at which they shall be chosen.

The offices of secretary and treasurer may be filled by one and the same person.

SECTION 2. The following-named persons, who reside respectively at the places set opposite their several names, shall be the first directors of the new corporation, that is to say:

20 1. Thomas Allen, St. Louis, Missouri.
2. Henry G. Marquand, New York.
3. George Cabot Ward, New York.

4. Wm. Tilden Blodgett, New York.
5. H. S. Higginson, Boston, Massachusetts.
6. William H. Swift, New York.
7. Sylvester H. Laflin, St. Louis, Missouri.
8. William Russell Allen, do.
9. Stephen D. Barlow, do.
10. James M. Loughborough, Little Rock, Arkansas.
11. Gerard B. Allen, St. Louis, Missouri.
12. Samuel Capp, do. do.
13. U. M. Rose, Little Rock, Arkansas.

And the following persons, who reside respectively at the places set opposite their several names, shall be the first officers of said new corporation, as below designated, that is to say:

President, Thomas Allen, of St. Louis, Missouri; vice-president, Henry G. Marquand, of New York; secretary, Stephen D. Barlow, of St. Louis, Missouri; treasurer, D. W. McWilliams, of New York.

SECTION 3. The said directors and officers shall continue to be such until the first Tuesday of March, in the year 1875, and until others are duly elected or chosen in their places and qualified.

ARTICLE III.

21 SECTION 1. The first annual election of said new corporation shall be held at the office of the said new corporation, in the city of St. Louis, on the first Tuesday in March, in the year 1875, and elections shall be held annually thereafter. Notice of the time and place of each and every election shall be given by the secretary, as prescribed by the company's by-laws.

SECTION 2. At each annual election there shall be chosen, by a majority of the votes of the stockholders voting, in person or by proxy, thereat, thirteen directors, who shall continue in office until others are elected and qualified in their places.

SECTION 3. The election by stockholders shall be conducted by three judges or inspectors thereof, to be appointed by the board of directors, or in case of their omission to do so, then by the stockholders qualified to vote at said election, neither of whom, however, shall be competent to be elected to any other office of the company at such election.

SECTION 4. At all elections each stockholder shall be entitled to one vote on every share of stock standing in his name on the books of the corporation not less than thirty days previous to such election.

SECTION 5. In the event of a failure to elect directors, or to hold the annual meeting therefor, said new corporation shall not
22 be thereby dissolved or deemed abandoned, but the directors for the time being shall continue such until the next annual election, or until their successors shall be elected in the manner which may be provided for in the by-laws of the company not inconsistent with the provisions of this agreement.

SECTION 6. Vacancies in the board of directors may be filled by

the remaining directors at any regular meeting of the board, or at any meeting duly convened in accordance with the provisions of the by-laws of the corporations.

SECTION 7. As soon after each annual election as may be the directors shall elect one of their number as president, and another as vice-president, and shall appoint or provide for the appointment of all other necessary officers and agents, who shall serve until other persons are duly chosen in their places.

ARTICLE IV.

SECTION 1. The capital stock of the corporation shall consist of $26,500,000, divided into 265,000 shares of $100 each.

SECTION 2. Every stockholder in each of the corporations, parties hereto of the 1st and 2nd parts, shall receive in place of the stock held by him in *in* such corporation stock in the new corporation as follows, to wit: For each share of stock held in the St. Louis
23 and Iron Mountain Railroad Company he shall receive one share of stock in the St. Louis, Iron Mountain and Southern Railway Company; and for each share of stock held in the Cairo and Fulton Railroad Company he shall receive sixty hundredths of one share in the "St. Louis, Iron Mountain and Southern Railway Company."

ARTICLE V.

Before any person appointed or elected treasurer of the new corporation shall enter upon the performance of the duties of office, he shall execute a bond, with such sureties and in such sum as shall be fixed and approved by the board of directors or by a majority of the directors, conditioned for the faithful performance of the duties of his office.

ARTICLE VI.

SECTION 1. Upon the making and perfecting of this agreement and act of consolidation, and upon the adoption and ratification thereof by two-thirds of all the votes of all the stockholders of the respective corporations, parties hereto, and upon the filing of the same, or a copy thereof, in the manner prescribed by law, the parties hereto shall be deemed and taken to be one corporation by the name provided in this agreement, and shall possess within the several States into and through which its railroad, or any part thereof, or its branches or leased lines may run, all of the privileges and franchises of each of said corporations so consolidated.

24 SECTION 2. Upon the consummation of said act of consolidation, as provided by law, all and singular the rights, privileges, and franchises of each of said corporations, parties hereto, and all other property, real, personal, and mixed, and all debts due on whatever account, as well stock subscriptions as other things in action, belonging to each and every said corporations, parties hereto, shall be taken and deemed to be transferred to and vested in the

"St. Louis, Iron Mountain and Southern Railway Company," as such new corporation, without further act or deed, and all property, all rights of way, and all and every other interests shall be as effectually the property of this new corporation, without further conveyance or assurance, as they were of the former corporations, parties hereto; and all rights of creditors and all liens upon the property created by either of the said corporations shall be preserved unimpaired, notwithstanding said merger and consolidation, and all the debts, liabilities, obligations, and duties of either of said corporations, parties hereto, shall thenceforth attach to the said new corporation and be enforced against it to the same extent and in the same manner as if said debts, liabilities, obligations, and duties had been incurred or contracted by it. And the board of directors — said company shall have full power and authority to borrow such sums of money, and in such form, as they may deem proper to pay
25 off the present debts and liabilities so assumed by the corporation hereby created, and to meet other exigencies of the company, and to secure the payment thereof by a mortgage or mortgages on the property and franchises of said company, or any part thereof. The by-laws, which may be adopted by concurrent resolution of stockholders, meeting of said companies, parties hereto, shall be the by-laws of said consolidated company, subject to repeal or amendment, as therein or by law provided.

In testimony whereof, the directors of the several corporations parties hereto have caused these presents to be signed in the names thereof by their respective presidents, and their several corporate seals to be affixed hereto, this the thirtieth day of April, A. D. 1874.

[SEAL.] THE ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,

(Sig.) By THO. ALLEN, *President.*

Attest: S. D. BARLOW, *Secretary.*

[SEAL.] CAIRO AND FULTON RAILROAD COMPANY,

(Sig.) By THOS. ALLEN, *President.*

Attest: WM. R. DONALDSON, *Secretary.*

26 *Cert. of Sec'y.*

OFFICE ST. LOUIS AND IRON MOUNTAIN RAILROAD CO.,
ST. LOUIS, MO.

I, Stephen D. Barlow, secretary of the St. Louis and Iron Mountain Railroad Company, being a corporation formed by a union of the St. Louis and Iron Mountain Railroad Company and its Arkansas branches with Cairo, Arkansas and Texas Railroad Company, all of Missouri, do hereby certify that a meeting of the stockholders was duly held at the office of the company in the city of St. Louis, Mo., on the first day of May, A. D. 1874, at twelve o'clock noon, for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting and the object thereof having been given by said company, as provided by law; that at said meeting of stockholders the said agreement was

read and considered, and a vote by ballot taken for the adoption or rejection of the same, according to law, which said ballot resulted as follows, to wit: One hundred and twenty-four thousand one hundred and ninety votes, representing 124,192 shares of stock in said railroad company, were cast for the adoption of said agreement, and that no votes were cast against the adoption of said agreement; that the total amount of stock held by all the stockholders in
27 said company is one hundred and forty-three thousand two hundred and fifty shares, each share entitling the stockholder to one vote, and that the total number of votes and shares cast and represented in favor of said agreement by the stockholders of said company exceeded eighty-five hundredths of all the votes and shares of stock, respectively in St. Louis and Iron Mountain Railroad Company, and that thereupon said agreement was declared to be adopted.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said company, the first day of May, A. D. 1874.

[SEAL.] (Signed) STEPHEN BARLOW,
Secretary.

Cert. of Sec'y.

"OFFICE CAIRO AND FULTON RAILROAD COMPANY,
LITTLE ROCK, ARK.

I, William R. Donaldson, secretary of the Cairo and Fulton Railroad Company, of Arkansas, do hereby certify that a meeting of the stockholders of said company was duly held at the office of the company in the city of Little Rock, Arkansas, on Monday, the fourth day of May, A. D. 1874, at 10 o'clock a. m., for the purpose of taking into consideration the foregoing agreement, due notice of the time and place of holding said meeting and the object thereof having been given by said company, as provided by law;
28 that at said meeting of stockholders the said agreement was read and considered, and a vote by ballot taken for the adoption or rejection of the same according to law; which said ballot resulted as follows: Four hundred and thirty-three thousand two hundred and eighty one votes, representing 433,281 shares of stock in said railroad company, was cast for the adoption of said agreement, and that no votes were cast against the adoption of said agreement; that the total amount of stock held by all of the stockholders in said company is four hundred and eighty thousand shares, each share entitling the shareholder to one vote, and that the total number of votes and shares cast and represented in favor of said agreement by stockholders of said company exceeded ninety hundredths of all the votes and shares of stock respectively, in said Cairo and Fulton Railroad Company, and that thereupon said agreement was declared to be duly adopted.

In testimony whereof I have *I have* hereunto set my hand and affixed the corporate seal of said Cairo & Fulton Railroad Company, this the 4th day of May, A. D. eighteen hundred and seventy-four.

[SEAL.] (Signed) WM. R. DONALDSON.

29 OFFICE OF THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, ST. LOUIS, *May 4th*, 1874.

I, Stephen P. Barlow, do hereby certify the foregoing to be a true copy of—

1st. Three resolutions of the board of directors of said St. Louis and Iron Mountain Railroad Company in relation to the union and consolidation thereof with the Cairo and Fulton Railroad Company, adopted on the 30th of April, 1874.

2nd. A resolution adopted in stockholders' meeting of said company, on the 1st day of May, 1874, approving and adopting the agreement for such union and consolidation.

3d. Two resolutions of the board of directors of the said Cairo & Fulton Railroad Company in relation to the consolidation of said company, adopted May 4th, 1874.

4th. A resolution adopted at a meeting of the stockholders of said Cairo & Fulton Railroad Company, at Little Rock, on Monday, May 4th, 1874, approving of the agreement for consolidation.

5th. The agreement executed by said two companies, in accordance with the resolutions of the respective boards of directors of said companies for consolidating said companies.

30 6th. The certificate of Stephen D. Barlow, secretary of said St. Louis and Iron Mountain Railroad Company, and

7th. The certificate of William R. Donaldson, secretary of said Cairo and Fulton Railroad Company, both endorsed on said agreement, in relation to its adoption and approval by the stockholders of said companies respectfully, as fully as said resolutions, agreement, and certificates remain of record and on file in the office of said St. Louis, Iron Mountain and Southern Railway Company.

In testimony whereof, I have hereunto set my hand and affixed the corporate seal of said St. Louis, Iron Mountain and Southern Railway Company, the 4th day of May, 1874.

[SEAL.] STEPHEN D. BARLOW, *Secretary.*

[Endorsed:] Filed in my office this second day of June, 1874. J. M. Johnson, secretary of State, by Frank Strong, deputy. Recorded in my office, in Book 2, "Articles of Association," pages 248 to 258, June 30th, 1874. J. M. Johnson, secretary of State, by ——, clerk.

OFFICE OF SECRETARY OF STATE,

31 LITTLE ROCK, ARKANSAS.

I, Jacob Frolick, secretary of State of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of the agreement for the consolidation of the St. Louis and Iron Mountain Railroad Company with the Cairo and Fulton Railroad Company, under the name of the "St. Louis, Iron Mountain and Southern Railway Company," together with proceedings in connection therewith, and the endorsements thereon, as appears by comparing the same with the original roll of said agreement on file in this office.

In testimony whereof, I have hereunto set my hand and affixed

my official seal at Little Rock, this 25th day of January, A. D. eighteen hundred and eighty-three.

[SEAL.] JACOB FROLICK,
Secretary of State.
By D. McRAE, *Deputy.*

(Ex. "A" to complaint.) Filed June 2, 1883.
J. W. CALLAWAY, *Clerk,*
By S. R. BROWN, *D. C.*

Schedule of the length of the main and all side tracks, switches, turnouts, and branches, of the Saint Louis, Iron Mountain and Southern Railway Company, and of the value of all improve-
32 ments, fixtures, and appurtenances, including all workshops, station-houses, warehouses, rolling-stock and railroad track, to be filed with the State board of railroad commissioners, according to the requirements of sections 44 & 55, of an act of the General Assembly of the State of Arkansas, approved March 31st, 1883, entitled An act to amend and revise the revenue laws of Arkansas.

Statement by way of Protest and Claim of Exemption from Taxation, under vested Charter Rights.

The Saint Louis, Iron Mountain and Southern Railway Company is a corporation formed by the consolidation of the Cairo and Fulton Railroad Company of Arkansas, a corporation created and chartered by the General Assembly of the State of Arkansas, by a public act approved January 12th, 1853, and by the further act of the same body, approved on the same day, to wit, January 12th, 1853, entitled an act to incorporate the Mississippi Valley Railroad Company with the St. Louis and Iron Mountain Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, said two companies, so constituted, assuming and adopting the designation of the Saint Louis, Iron Mountain and Southern Railway Company.

33 That by such designation said consolidated corporation exists, and has its corporate being in the State of Arkansas, by virtue of the charter rights, privileges, and franchises granted and conferred by the said charter act of the Cairo and Fulton Railroad Company aforesaid, and by virtue thereof owns, holds, and claims to be entitled to all the benefits, privileges, rights, exemptions, and immunities, as well as lands, tenements, and property of every description belonging and appertaining to the said Cairo and Fulton Railroad Company, so consolidated as aforesaid.

Reference is hereby made to the official record of such consolidation in the office of the secretary of the State of Arkansas.

The said Saint Louis, Iron Mountain and Southern Railway Company, in filing this schedule, in conformity with the requirements of section 55 of the act of March 31st, 1883, does not waive or relinquish any of the rights of exemption from taxation granted and conferred as aforesaid, but now and at all times claiming and

relying upon the same, solemnly asserts the same and protests that all of the property embraced in the schedule filed herewith is exempt from taxation under and by virtue of the 11th section of the act of January 12th, 1853, incorporating the Cairo and Fulton Railroad Company, and also by virtue of the provisions of section 25 of an act of the same date, creating and incorporating the Mississippi Valley Railroad Company.

The Saint Louis, Iron Mountain and Southern Railway Company further says: That its line of railway was completed in the State of Arkansas on the 5th day of December, 1873, and that since its completion it has never yet paid or earned as much as ten per cent. per annum upon its capital stock.

And it further avers and claims that it is exempt from assessment and taxation by virtue of the provisions of section 9 of an act of the General Assembly of the State of Arkansas, approved November 26, 1856, entitled an act to aid in the construction of the Cairo and Fulton Railroad, and declares that since its organization it has never in any year declared or earned a dividend of as much as ten per cent. upon the capital stock of its said company.

Wherefore, the premises considered, the Saint Louis, Iron Mountain and Southern Railway Company formally and solemnly protests against any of the property in the accompanying schedule being assessed for taxation, and against any part thereof being certified to the assessors of the counties through which any portion of its said railway extends, as well as against the doing of any act by the hon. board of State railroad commissioners that may tend to impair or interfere with the vested rights of this corporation in the manner above indicated. All of which statement and protest is respectfully submitted.

THE [ST.] L., I. M. & SO. RY CO.,
By J. M. MOORE &
DODGE & JOHNSON, *Atty's.*

Tax Return of the St. Louis, Iron Mountain and Southern Railway Company.

ST. LOUIS, MO., *May* 29, 1883.

To the Honorable SECRETARY OF STATE,
Little Rock, Arkansas.

DEAR SIR: The St. Louis, Iron Mountain and Southern Railway Company makes the following return of the property of said company for taxation, as owned by it on the 1st day of March, 1883, subject to the accompanying claim of exemption.

Railroad Track.

Including the length of all main and all side tracks, switches, and turn-outs in each county in which said railroad is located, together with all real estate used exclusively for railroad purposes:

305.11 miles main line, at $3,544 per mile	$1,081,309	84
50.74 miles side track and switches, $1,500 per mile	76,110	00
140.08 miles Helena branch, $3,544	496,443	52
7.93 miles side track and switches, $1,500	11,895	00
36 26.66 miles White River branch, $3,544	94,483	04
2.31 miles side track and switches, $1,500	3,465	00
34.03 miles Camden branch, $3,544	120,602	32
1.25 miles side track and switches, $1,500	1,875	00
Total valuation	$1,886,133	72

Rolling Stock.

The rolling stock of this company is used on the entire length of the road, 884.85 miles, being 505.88 within and 378.97 without the State of Arkansas.

	Total Value.
135 locomotives, first class, good, at $4,000	$540,009 00
13 do. second class, ordinary, $3,000	39,000 00
41 passenger cars, first class, good, $2,000	82,000 00
17 do. do. second class, ordinary, $1,500	25,500 00
5 post office cars, first class, good, $2,000	10,000 00
23 baggage cars, second class, ordinary, $800	4,800 00
55 caboose cars, first class, good, $400	22,000 00
8 caboose cars, second class, ordinary, $300	2,400 00
840 flat and coal cars, first class, good, $200	168,000 00
380 flat and coal cars, second class, ordinary, $175	66,500 00
Carried forward	983,200 00
Brought forward	983,200 00
200 flat and coal cars, third class, poor, $150	30,000 00
1,956 grain and m'd'se cars, first class, good, $250	489,000 00
470 grain and m'd'se cars, second class, ordinary, $200	94,000 00
37 230 grain and m'd'se cars, third class, poor, $175	40,250 00
250 stock cars, first class, good, $250	62,500 00
326 stock cars, second class, ordinary, $200	65,200 00
5 carpenter cars, $250	1,250 00
350 hand cars, $20	7,000 00
195 push cars, $15	2,925 00
4 wrecking cars, $400	1,600 00
2 pile drivers, $800	1,600 00
16 boarding cars, $300	4,800 00
8 Pullman cars, $4,500	36,000 00
2 directors' cars, $5,000	10,000 00
1 pay and receiver's car, $2,000	2,000 00
Total	$1,831,325 00

Schedule.

Showing the length of the main and all side tracks, switches, and turn-outs, and the value of all improvements, stations, and structures including the railroad track located on the right of way in each county, city, and town, through or into which the railroad of the St. Louis, Iron Mountain & Southern railway may run in the State [of] Arkansas, as owned by said company on the 1st day of March, 1883.

Clay County.

Main line.

	1,930 main track, at $3,544.00 per mile	$68,044 80
38	2.36 side track, at 1,500.00 per mile	3,540 00
	Section house, Moark	450 00
	Freight and passenger depot, 6 section houses, Corning	937 00
	Freight and passenger depot, section houses, hotel, train master's office, Knobel	8,495 00
	Freight and passenger depot, Peach Orchard	450 00
	Total valuation, main line	81,916 80

Helena Branch.

4.66 miles main track, at $3,544.00	16,515 04
2.36 miles side track, at 1,500	3,540 00
Total valuation, Helena branch	20,055 04

Moark.

1,906 feet main line, at $3,544	1,279 30
1,906 feet side track, at 1,500.00	541 49
Section house, Moark	450 00
Total in Moark	2,270 00

Williams.

327 feet main line, at 3,544.00	219 48
327 feet side track, at 1,500	92 90
	312 38

39 Corning.

4,586 feet main line, at 3,544.00	3,078 12
" " side track " 1,500	1,302 88
Freight and passenger depot, section house	937 00
	5,318 00

Black River.

1,823 feet main line, at 3,544.00	$1,223 60
" " side track, at 1,500	517 91
	1,741 51

Knobel.

1,784 feet main line, at 3,544.00	1,197 42
" " side track, at 1,500.00	506 83
Freight and passenger depot, 6 section houses, coal house, hotel, train master's office	8,495 00
	10,199 25

Peach Orchard.

2,064 feet main track, at 3,544.00	1,385 38
" " side track, at 1,500	586 36
Freight & passenger depot	450 00
	2,421 74

Helena Branch.

Knobel.

13,010 feet main track, at 3,544.00	8,722 31
" " side track, at 1,500	3,696 14
	12,428 45

40 Collings.

310 feet main track, at $3,544	208 07
" " side track, at 1,500	88 07
	296 14

Green County.

9.75 miles main track, at 3,544.00	34,544 00
.25 miles side track, at 1,500	375 00
Freight & passenger depot, section house, Delaplaine	900 00
	35,829 00

Helena Branch.

23 miles main track, at $3,544	$1,512 00
68 miles side track, at 1,500	1,020 00
1 section house, freight & passenger depot, Gainsville; 2 section houses, freight & passenger depot, Parmley	3,700 00
	86,232 00

Delaplaine.

Main Line.

2,033 feet main track, at $3,544	$1,364 55
" " side track, at 1,500	577 58
Freight and passenger depot, section house	900 00
	$2,842 13

Helena Branch.

Cache.

1,540 feet main track, at $3,544	1,033 65
" " side track, at 1,500	437 51
	1,471 16

41 Gentrys.

250 feet main track, at $3,544.00	167 80
" side track, at 1,500	71 03
	238 83

Gaine-ville.

—— feet main track, at 3,544	
Section houses	600 00
Passenger depot	1,000 00

Parmley.

1,650 feet main track, at 3,544	1,107 48
" " side track, 1,500	468 77
Freight & passenger depot	900 00
2 section houses	1,200 00
	$3,676 25

Village Creek.

180 feet main track, at $3,544.00	120 82
" side track, at 1,500	51 14
	171 96

Randolph County.

250 miles main track, at 3,544	8,860 00
38 " side track, at 1,500	570 00
Freight and passenger depot, 2 section houses, O'Kean	1,387 00
	10,817 00

42 O'Kean.

1,331 feet main track, at 3,544	8893 37
" " side track, at 1,500	378 13
Freight & passenger depot, 2 section houses	1,387 00
	2,658 50

Lawrence County.

23 miles main track, at 3,544.00	81,512 00
197 miles side track, at 1,500	2,955 00
Ice house, road master's office, depot & hotel, tools & section houses, Walnut Ridge	3,970 00
Freight & passenger depot, Winton	675 00
Section house, Alicia	450 00
	89,562 00

Murta.

1,483 feet main track, at 3,544.00	995 39
" " side track, at 1,500	421 32
	1,416 71

Walnut Ridge.

4,077 feet main track, at 3,544.00	2,736 48
" " side track, at 1,500	1,158 28
Ice house, road master's office, depot and hotel, tool house & section house	3,970 00
	7,864 76

43 Winton.

1,531 feet main track, at 3,544	1,027 60
" " side track, at 1,500	434 96
Freight and passenger depot	675 00
	2,137 56

Lindsay.

400 feet main track, at 3,544	268 48
" " side track, at 1,500	113 64
	382 12

Alicia.

2,940 feet main track, at 3,544	1,973 33
" side track, at 81,500	835 35
Section house	450 00
	3,258 58

Jackson County.

Main line:	
36.20 miles main track, at 3,544	$128,292 80
5.15 " side track, at 1,500	7,725 00
White River br.:	
5.43 miles main track, at 3,544	19,243 92
.65 " side track, at 1,500	975 00
Main line:	
Freight and passenger depot, section house, Swifton	937 00
Freight and passenger depot, section house, Tuckerman	937 00
Freight and passenger depot, 6 section houses, Campbell	1,596 00
Freight and passenger depot, road master's office, section house, Newport	5,276 00
44 Freight and passenger depot, Oliphant	200 00
Residence, section house, Grand Glaise	825 00
Total	16,600 72

Land Switch.

790 feet main track, at 3,544	530 25
" side track, at 1,500	224 44
	754 69

Swifton.

1,727 feet main track, at 3,544	1,159 16
" " side track, at 1,500	490 64
Freight and passenger depot, section house	937 00
	2,586 80

Grand Glaise.

1,381 feet main track, at 3,544	926 93
" " side track, at 1,500	392 34
Residence, section house	825 00
	2,144 27

Tuckerman.

1,727 feet main track, at 3,544	1,159 16
" " side track, at 1,500	490 64
Freight and passenger depot, section house	937 00
	2,586 80

Campbell.

1,262 feet main track, at 3,544	8847 05
" side track, at 1,500	358 53
Freight and passenger depot, 6 section houses	1,596 00
	2,801 38

45 Newport.

13,808 feet main track, at 3,514	9,267 93
" " side track, " 1,500	3,922 85
Freight and passenger depot, road-master's office, section house	5,276 00
	18,466 78

Oliphant.

4,295 feet main track, at 3,544	2,882 80
" " side track, " 1,500	1,220 21
Freight and passenger depot	

Gravel Switch.

2,250 feet main track, at 3,544	1,510 20
" " side track " 1,500	693 22
	2,149 42

Independence County.

Main line:	
105 miles main track, at 3,544	372,120
White River Br.:	
2,123 miles main track, at 3,544	7,523,912
166 " side track, " 1,500	249,000
Freight and passenger depot at Independence	200,000
	7,972,912

46 Paroquet.

White River Branch:	
156 feet main track, at 3,544	1,047 07
" " side track, " 1,500	443 20
	1,490 27

Newark.

1,317 feet main track, at 3,544	883 97
" " side track, " 1,500	374 16
	1,258 13

Sulphur Rock.

1,746 feet main track, at 3,544	$1,171 92
" " side track, " 1,500	506 04
	1,677 96

Mooresfield.

1,430 feet main track, at 3,544	959 82
" " side track, " 1,500	406 26
	1,366 08

Batesville.

2,713 feet main track, at 3,544	1,820 97
" " side track, " 1,500	770 76
	2,591 73

White County.

38.70 miles main track, at 3,544	137,152 82
54.6 " side track, " 1,500	8,190 00
Freight and passenger depot, Bradford	487 00
47 Freight and passenger depot, section house, Russell	975 00
Freight and passenger depot, boarding house, Baldknob	1,432 00
Freight and passenger depot, Judsonia	108,700 00
Freight and passenger depot, section house, Kensett	1,125 00
Telegraph office, Garner	450 00
Freight and passenger depot, section house, Beebe	1,575 00
	152,473 80

Bradford.

2,419 feet main track, at 3,544	1,623 63
" " side track, at 1,500	687 24
Freight and passenger depot	487 00
	2,797 87

Russell.

2,048 feet main track, at $3,544	1,374 62
" side " at 1,500	581 84
Freight and passenger depot, section house	975 00
	2,931 46

Green.

300 feet main track, at 3,544	201 36
" " side track, at 1,500	85 23
	286 59

Lippman.

332 feet main track, at 3,544	$222	84
" " side track, at 1,500	94	32
	317	16

48 Charterson.

348 feet main track, at 3,544	233	58
" " side track, at 1,500	98	87
	332	45

Bald Knob.

5,996 feet main track, at 3,544	4,024	52
" " side track, at 1,500	1,703	46
Freight and passenger depot, boarding house	1,432	00
	7,159	98

Castilla.

1,380 feet main track, at 3,544	926	26
" " side track, at 1,504	392	06
	1,318	32

Harley's.

415 feet main track, at 3,544	278	55
" " side track, at 1,500	117	90
	396	45

Judsonia.

1,832 feet main track, at 3,544	1,229	64
" " side track, at 1,500	520	47
Freight and passenger depot, section house	1,087	00
	2,837	11

Red River.

1,030 feet main track, at 3,544	691	34
" " side track, at 1,500	292	62
	983	96

49 Kensett.

3,326 feet main track, at 3,544	2,232	41
" " side track, " 1,500	944	92
Freight and passenger depot, section house	1,125	00
	4,302	33

Higginson.

1,560 feet main track, at 3,544	1,047	07
" " side " " 1,500	443	20
	1,490	27

Garner.

3,326 feet main track, at 3,544	$2,232 41
" " side " " 1,500	944 92
Telegraph office	450 00
	3,627 33

Beebe.

4,540 feet main track, at 3,544	3,047 24
" " side " " 1,500	1,289 81
Freight and passenger d., section house	1,575 00
	5,912 05

Lonoke County.

17.90 miles main track, at 3,544	63,437 60
1.48 " side track, at 1,500	2,220 00
Freight and passenger depot, Austin	487 00
" " " " section house, Cabot	881 00
	67,025 60

50 Austin.

1,466 feet of main track, at 3,544	983 98
" " side track " 1,500	416 49
Freight and passenger depot	487 00
	1,887 47

Cabot.

1,398 feet main track, at 3,544	1,629 67
" " side " " 1,500	689 79
	2,319 46

Jacksonville.

2,542 feet main track, at 3,544	1,706 19
" " side " " 1,500	722 18
	2,428 37

Pulaski County.

25.45 miles of main track, at 3,544	90,194 80
12.47 " side " at 1,500	18,705 00
Freight and passenger depot, section house, Jacksonville	900 00
Section house, McAlmont	450 00
Freight and passenger depot, F't Smith Crossing	2,925 00
Machine shop and round house, car-repairing shop, blacksmith shop, boiler shop, sand ho-se, m. m. office, residence r'd master's office, car shop, car repair & paint shop, Bairing Cross	1,156 30

51	Office building, hotel, and passenger depot, express and baggage room, sheds, car repairer's oil house, store room, 2 scrap & oil houses, freight houses, sheds, & platform section house, Little Rock	$2,426 90
	Freight and passenger depot, Noblevale	487 00
	" " " " " Alexander	680 00
		150,173 80
	McAlmont.	
	3,618 feet main track, at 3,444	2,428 40
	3,618 do. side do. " 1,500	1,027 87
	Section houses	450 00
		3,906 27
	Loomis.	
	353 feet main track, at 3,544	236 93
	353 do. side do. " 1,500	100 29
		337 22
	Barring Cross.	
	33,225 feet main track, at 3,544	22,300 622
	33,225 do. side do. " 1,500	9,439 22
	Machine shop, round house, car-repair shop, blacksmith shop, boiler shop, sand house, m. m. office, residence, road-master's office, car shop, car-repair, and paint shop	11,563 00
		43,302 84
52	Little Rock.	
	1,320 feet main track, at 3,544	$885 98
	21,844 do. side do. " 1,500	6,205 88
	Office building, hotel, & pass. depot, express and baggage room, sheds, car-repairs, oil house, store room, 2 scrap and oil houses, freight house, sheds, and platform section house	24,269 00
		31,360 86
	Ward No. 2.	
	600 feet main track, at 3,544	402 72
	600 do. side do. " 1,500	170 46
		573 18
	Appleton.	
	2,740 feet main track, at 3,54[4]	1,839 08
	2,740 do. side do. " 1,500	778 43
		2,617 51

Marblevale.

1,300 feet of main track, at 3,544	8872 56
1,300 do. side do. " 1,500	369 33
F'rt & pass. depot	487 00
	1,728 89

Olson.

420 ft. main track, at 3,544	281 90
420 do. side do. " 1,500	119 32
	401 22

53 Alexander.

1,738 ft. of main track, at 3,544	1,166 55
1,738 " side " " 1,500	493 76
Fr't and pass. depot	680 00
	2,340 35

Saline County.

20.85 miles main track, at 3,544	73,892 40
3.17 " side " " 1,500	4,755 00
Section house (Alexander)	450 00
Fr't & pass. dep't (Bryant)	810 00
Fr't " " and section house (Benton)	975 00
" " " " " " (Traskwood)	905 00
	81,787 40

Weisman.

600 feet main track, at 3,544	402 72
600 " side " " 1,500	170 46
	573 18

Bryant.

—— feet of main track, at 3,544	
—— " side " " 1,500	
Freight and pass. depot	810 00

Sidell.

400 feet main track, at 3,544	268 48
400 " side " " 1,500	113 64
	382 12

54 Smiths.

520 ft. main track, at 3,544	349 02
520 " side " " 1,500	147 73
	496 75

Benton.

3,878 feet main track, at 3,544	$2,602 90
3,878 " side " " 1,500	1,101 74
Fr't and pass. depot and sect. house	975 00
	4,679 64

Saline Gravel.

1,810 feet main track, at 3,544	5,443 43
1,810 " side " " 1,500	2,304 05
	7,747 48

Wells.

220 ft. main track, at 3,544	147 66
220 " side " " 1,500	62 50
	210 16

Traskwood.

1,300 ft. main track, at 3,544	872 56
1,300 " side " " 1,500	369 33
Fr't and pass. depot and sect. house	905 00
	2,146 89

Hot Springs County.

26.35 miles of main track, at 3,544	93,384 00
2.98 " side " " 1,500	4,470 00
Fr't depot, 2 section houses (Malvern)	1,800 00
	99,654 00

55 Lof Kettlers.

270 feet main track, at 3,544	181 22
270 " side " " 1,500	76 71
	257 93

Bécker.

270 feet main track, at 3,544	$181 22
270 " side " " 1,500	76 71
	257 93

Wyandotte.

1,000 feet main track, at 3,544	671 20
1,000 " side " " 1,500	284 10
	953 30

Gifford.

2,460 feet of main track, at 3,544	$1,651 15
2,460 " " side " " 1,500	698 88
	2,350 03

Pearla.

470 feet of main track, at 3,544	315 46
470 " " side " " 1,500	133 52
	448 98

Malvern.

6,450 feet of main track, at 3,544	4,329 24
6,450 " " side " " 1,500	1,832 44
Fr. depot, 2 section houses	1,800 00
	7,961 68

56

Justus.

320 ft. main track, at 3,544	214 78
320 " side " " 1,500	90 91
	305 69

Huntington.

210 feet of main track, at 3,544	140 95
210 " " side " " 1,500	59 66
	200 61

Deckers.

120 feet main track, at 3,544	80 54
120 " side " " 1,500	34 09
	114 63

Donaldson.

2,740 feet main track, at 3,544	1,839 08
2,740 " side " " 1,500	778 43
	2,617 51

Arthur.

200 feet main track, at 3,544	134 24
200 feet side " " 1,500	56 82
	191 06

Witherspoon.

1,240 feet main track, at 3,544	832 28
1,240 feet side track, at 1,500	252 28
	1,184 56

57 Clark County.

30.00 miles main track, at $3,544	$106,320 00
3.09 " side track, 1,500	4,635 00
	110,955 00

Camden Branch.

1.024 miles of main track, at 3,544	36,290 56
.33 " side track, at $1,500	495 00
2 section houses, fr't, pass. depot, and residence (Arkadelphia)	2,090 00
Freight and pass. depot & section house (Curtis)	1,215 00
Coal shed and section house, Gurdon	450 00
	40,540 56

Arkadelphia.

½ mile main track, at 3,544	1,772 00
9,080 feet side " " 1,500	2,579 63
2 section houses, fr't & pass. depot & residence	2,090 00
	6,441 63

Fords.

300 ft. main track, at $3,544	201 36
" " side " 1,500	85 23
	286 59

58 Curtis.

1,680 feet of main track, at $3,544	1,127 62
1,880 " side track, at 1,500	477 29
Fr't and pass. depot & section-house	1,215 00
	2,819 91

Van Dorn.

400 ft. main track, at 3,544	268 48
400 " side track, at 1,500	113 64
	382 12

Gurdon.

2,280 feet main track, at 3,544	1,530 34
2,280 feet side track, at 1,500	647 75
Coal shed and section house	450 00
	2,628 09

Wilson.

210 ft. main track, at 3,544	140 95
210 " side " at 1,500	59 66
	200 61

Rawleys.

210 feet main track, at 3,544	$140 95
210 " side " at 1,500	59 66
	200 61

Bierne.

2,182 feet main track, at 3,544	1,464 56
2,182 " side track, 1,500	619 91
	2,084 47

59 Camden Branch.

Key.

350 feet main track, at 3,544	234 92
359 " side track, at 1,500	99 44
	334 36

Pratt.

200 ft. main track, at 3,545	134 24
200 " side track, at 1,500	56 82
	191 06

Wheeland.

1,000 feet main track, at 3,544	671 20
1,000 " side track, at 1,500	284 10
	935 30

Patrick.

230 ft. main track, at 3,544	154 38
230 " side track, at 1,500	65 34
	219 72

Nevada County.

Main line:

13.75 miles of main track, at 3,544	48,730 00
11.49 " " side " " 1,500	2,235 00

Camden Branch:

3 miles main track, at	10,632
3 " side " "	4,500
Fr't and pass. depot & sec't house, Boughton	870 00
" " " " " " Prescott	1,150 00
" " " " " " Emmett	420 00
	53,556 32

60 Boughton.

2,018 feet main track, at 3,544	$1,354 48
2,018 " side track, 1,500	573 31
Fr't, pass. depot, and section house	870 00
	2,797 79

Prescott.

1 mile main track, at 3,544	3,544 00
3,043 feet side track, " 1,500	865 32
Fr't and pass. depot and section house	1,150 00
	5,558 52

Steeles.

233 ft. main track, at 3,544	156 39
233 ft. side track, 1,500	66 20
	222 59

Emmett's.

2,584 feet main track, at $3,544	1,734 38
2,584 " side " " 1,500	734 11
Fr't and pass. depot	420 00
	2,888 49

Hempstead County.

2.95 miles of main track, at 3,544	77,790 80
3.66 " " side " " 1,500	5,490 00
Section house, fr't and pass. depot, express office, road master's office (Hope)	1,430 00
Fr't & pass. depot, Fulton	2,320 00
	87,030 80

61 Wood's Switch.

492 feet main track, at 3,544	330 23
492 " side " " 1,500	139 78
	470 01

Dowe's.

304 feet main track, at 3,544	204 04
304 " side " " 1,500	86 37
	290 41

Currie's.

229 feet main track, at 3,544	153 70
229 " side " " 1,500	65 06
	217 76

Hope Lumber Co.

1,110 feet main track, at 3,544	$7,450 03
1,110 " side " " 1,500	315 35
	1,060 38

Hopé.

1 mile main track, at 3,544	3,444 00
9,039 feet side track, 1,500	2,567 98
Road master's office	1,430 00
	7,541 98

Sheppard.

3,706 feet main track, at 3,544	2,487 47
306 " side " " 1,500	1,052 87
	3,540 34

62

Weaver's.

125 feet main track, at 3,544	83 90
125 " side " " 1,500	35 51
	119 41

Moore's.

336 feet main track, at 3,544	225 52
336 " side " " 1,500	95 45
	320 97

Fulton.

4,004 feet main track, at 3,544	2,687 48
4,004 " side " " 1,500	1,137 54
Freight and pass. depot	2,320 00
	6,145 02

Miller County.

18.46 miles of main track, at 3,544	65,422 24
6.83 " side " " 1,500	10,245 00
Sect. house, fr't & pass. depot (Homan), car shops, blacksmith shops, road master's office, round house & sand, fuel, oil, and ice houses, transfer depot & stock yds., office, storeroom, and stable, express & baggage rooms, residence, laundry, freight depot, coal sheds, hotel and pass. depot & out houses, Texarkana	15,759 00
	92,261 24

63	Homan.	
1,367 feet of main track, at 3,544		$917 53
1,367 " side " " 1,500		338 36
Section houses, fr. & pass. depot		835 00
		2,140 89
	Mandville.	
1,314 feet main track, at 3,544		181 96
1,314 " side " " 1,500		373 71
		1,255 27
	Texarkana.	
33,408 feet main track, 3,544.00		22,423 45
33,408 " side " 1,500		9,491 21
Section houses, car shops, bl'ksmith shops, roadmaster's office, round house, sand, tool, oil & ice houses, transfer depot, stock yards, office, store room, stables, express and baggage-room, residence, laundry, fr't and pass. depot, coal-shed, hotel & out-houses		15,759 00
		47,673 66
	Craighead County.	
20.64 miles of main track, 3,544.00		73,148 16
1.28 " side track, 1,500.00		1,920 00
		75,068 16
	Powell.	
1,520 feet of main track, 3,544.00		1,020 22
1,520 " side " 1,500		431 83
		1,452 05
64	Nettleton.	
2,960 feet of main track, 3,544		1,986 75
2,960 " side " 1,500		840 93
		2,827 68
	Thorn's.	
450 feet main track, 3,544		302 04
450 " side " 1,500		127 84
		429 88
	Maguire's.	
250 feet main track, 3,544		167 80
250 " side " 1,500		71 02
		238 82

Ridge.

1,580 feet main track, 3,544	$1,060 49
1,580 " side " 1,500	448 87
	1,509 36

Poinsett County.

18.10 miles of main track, $3,544	64,146 40
.57 " side " 1,500	855 00
Freight and passenger depot & section houses, Nettleton	1,500 00
" " " " " " Hamburg	1,660 00
	68,101 40

Harrisburg.

1,740 feet main track, $3,544	1,167 88
1,740 " side " 1,500	494 33
Freight and pass. depot and section house	1,600 00
	3,262 21

65

White Hall.

1,280 feet main track, $3,544	859 13
1,280 " side " 1,500	363 65
	1,222 78

Cross County.

20.85 miles main track, $3,544	73,892 40
1.72 " side " 1,500	1,080 00
Freight and pass. depot and section houses, Vandale	1,950 00
	76,922 40

Hydrick.

310 feet main track, $3,544	208 07
310 " side " 1,500	88 07
	296 14

Cherry Valley.

1,515 feet main track, $3,544	1,016 87
1,515 " side " 1,500	43 41
	1,447 28

Smithville.

250 feet main track, $3,544	167 80
25 " side " 1,500	71 20
	238 82

Vandale.

1,540 feet main track, $3,544	$1,033 64
1,5[4]0 f't side " 1,500	437 51
Fr. & pass. depot & section house	1,950 00
	3,421 75

66 Wolford.

210 feet main track, $3,544	140 95
210 " side " 1,500	59 66
	200 60

Lee County.

19.20 miles main track, $3,544	68,044 80
.22 " side " 1,500	330 00
Fr't and pass. depot (Haynes)	100 00
" " (Mariana)	150 00
	68,624 80

Marianna.

750 feet main track, $3,544	503 40
750 " side " 1,500	213 07
Fr't and pass. depot	150 00
	866 47

Howe's.

430 feet main track, $3,544	288 62
430 " side " 1,500	122 16
	410 78

St. Francis County.

17.19 miles main track, $3,544	60,021 36
1.47 " side " 1,500	2,205 00
Section house, fr't and pass. dept (Forrest City)	1,750 00
Fr't and pass. depot (Bonair)	75 00
	64,951 36

67 Colt.

1,480 feet main track, $3,444	993 38
1,480 " side " 1,500	420 47
	1,413 85

Caldwell.

310 feet main track, $3,544	208 07
310 " side " 1,500	88 07
	296 14

Forrest City.

5,458 feet main track, $3,544	$3,663 40
5,458 " side " 1,500	1,550 62
Section house, fr't and pass. depot	1,750 00
	6,964 02

Haynes'.

560 feet main track, $3,544	375 87
560 " side " 1,500	159 10
	534 97

Phillips County.

16.44 miles main track, $3,544	58,263 36
.47 " side " 1,500	705 00
Fr't and pass. depot (Lowry)	100 00
" " " (Latour)	100 00
" " " (Helena)	100 00
	59,268 36

68

Latour.

800 feet main track, $3,544	536 96
800 " side " 1,500	227 28
Fr't and pass. depot	100 00
	864 24

Huma.

450 feet main track, $3,544	302 04
450 " side " 1,500	127 84
	429 88

Helena.

1,260 feet main track, $3,544	845 71
1,260 " side " 1,500	357 97
Fr't and pass. depot	100 00
	1,303 68

Ou-chita County.

Camden Branch:

23.76 miles main track, $3,544	84,205 44
.93 " side " 1,500	1,380 00
Fr't and pass. depot (Chidester)	900 00
" " " (Whalen)	600 00
" " " (Camden)	250 00
	$89,585 44

Basham's.

600 feet main track, $3,544	$402 72
600 " side " 1,500	170 46
	573 18

69 Alexis.

260 feet main track, $3,544	174 50
" " side " 1,500	73 86
	248 37

Chidester.

900 feet main track, $3,544	604 08
900 " side " 1,500	255 69
Fr't and pass. depot	900 00
	1,759 77

Potter.

900 feet main track, $3,544	604 08
900 " side " 1,500	255 69
	859 77

Camden.

3,000 feet main track, $3,544	2,013 60
300 " side " 1,500	852 30
Fr. and pass. depot	2,500 00
	5,365 99

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

S. D. Barlow, ass't sec'y, being duly sworn, says: That he has read the foregoing report subscribed by him, and that the same is true to the best of his knowledge and belief.

(Signed) S. D. BARLOW.

Subscribed and sworn to, this 29th May, 1883, before me,
70 the undersigned, a notary public within and for the city aforesaid, duly commissioned, on the 28th day of June, 1880, for the term expiring on the 27th day of June, 1885.

[SEAL.] (Signed) THOMAS G. PORTIS,
Notary Public.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, Jacob Frolick, secretary of State of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy of

schedules of railroad track and of rolling stock belonging to the St. Louis, Iron Mountain and Southern Railway Company, filed by said company in this office on the first day of June, 1883, as appears by comparing the same with the original roll of said schedule now on file in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Little Rock, this 1st day of June, A. D. 1883.

[SEAL.]

JACOB FROLICK,
Secretary of State,
By D. McRAE, *Deputy.*

Filed June 2, 1883.

J. W. CALLAWAY, *Clerk,*
By S. R. BROWN, *D. C.*

71 *Order as to Hearing and as to Restraining Order.*

THURSDAY, *June* 14, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiffs,
vs.
JAMES H. BERRY, Governor, JACOB FROLICK, Sec. of State, and A. W. Files, Auditor, as the Board of Railroad Commissioners for the State, and Jacob Frolick, Secretary of State, Defendants. } 1645.

Comes the plaintiff, by Dodge and Johnson and J. M. Moore, its attorneys, and the defendants by the attorney general and U. M. and G. B. Rose, their attorneys, and on motion of plaintiff it is ordered that the hearing of this application for a restraining order in said cause be set for the 25th day of June, 1883, and in the mean time that the restraining order heretofore made against the Secretary of State be continued until said day and until the further order of this court, and the plaintiff here in open court stipulates and agrees, that if the restraing order shall be vacated and the prayer of plaintiff for an injunction refused, that an order shall be entered directing the assessment of plaintiff's railroad to be certified by the Secre-
72 tary of State to the proper county officials and by them entered upon the assessment rolls and the tax books for the present year, and that assessment shall have the same effect as if entered upon the assessment rolls within the time prescribed by law.

WEDNESDAY, *June* 20, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JAMES H. BERRY *et als.* } 1645.

On this day come said defendants by the Attorney-General, C. B. Moore, and U. M. and G. B. Rose, their solicitors, and file herein their answer.

Filing and Answer.

Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JAMES H. BERRY *et al.*

Come said defendants, and for answer say:

I. That the consolidation mentioned in the complaint was effected after the completion of said Cairo and Fulton Railroad and was had in virtue of the 43d section of an act of the General Assembly
73 of the State of Arkansas, entitled "An act to provide for a general system of railroad incorporation," approved July 23, 1868.

II. Said capital stock of said Cairo and Fulton Railroad Company has paid an interest of ten per cent. per annum, and said road has paid a like interest.

C. B. MOORE.
U. M. & G. B. ROSE.

Filed in open c't June 20, 1883.

J. W. CALLOWAY, *Clerk*,
By S. R. BROWN, *D. C.*

Continued.

MONDAY, *June* 25, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO., Plaintiff,
vs.
BOARD OF RAILROAD COMMISSIONERS FOR THE STATE OF ARK., Defendants. } 1645.

Comes the plaintiff, by Dodge and Johnson and J. M. Moore, their solicitors, and come the defendants by Hon. C. B. Moore, attorney-general, and U. M. and G. B. Rose, their solicitors, and by consent of parties it is ordered that this cause be continued until the third Monday in October next, subject to the stipulations and orders heretofore entered in this cause, and it is ordered that the restraining order heretofore made in said cause continue in force until said day or further order of the court.

74 *Set down for Hearing.*

TUESDAY, *Oc't 2d*, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN R'Y CO., Plaintiffs,
vs.
THE BOARD OF RAILROAD COMMISSIONERS, Defendants. } 1645.

Comes said plaintiff, by Jno. M. Moore, its solicitor; comes also said defendants, by Hon. C. B. Moore, attorney-general, and U. M. and G. B. Rose, their solicitors, and upon motion and by consent of all parties, it is ordered by the court that this cause be set down

for hearing on Thursday, Oct. 18, 1883, subject to all the agreements and stipulations heretofore entered into herein.

FRIDAY, *October* 12, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN R'Y COMPANY
vs.
BOARD OF RAILROAD COMMISSIONERS. } 1645.

Come the defendants herein, by Hon. C. B. Moore, attorney-general, and U. M. and G. B. Rose, their solicitors, and file their application for a commission to take depositions on the part of said defendants in the above-entitled cause.

Whereupon the court orders that said commission be issued, directed to any officer authorized by law to take depositions in or out of the State.

75 In the Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
vs.
JAMES H. BERRY, Governor, *et al.*, BOARD OF RAILROAD COMMISSIONERS, Def'ts.

Come the defendants, by their attorneys, and hereby apply to the court for a commission to issue to take depositions on the part of the said defendants in the above-entitled cause, directed to any officer authorized to take depositions, in or out of the State of Arkansas.

U. M. & G. B. ROSE AND C. B. MOORE,
Att'y's for Def'ts.

Filed Oct. 12, '83.

J. W. CALLOWAY, *Clerk*,
By S. R. BROWN, *D. C.*

SATURDAY, *October* 20, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
vs.
BOARD OF RAILROAD COMMISSIONERS FOR THE STATE OF ARKANSAS, Defendants. } 1645.

Comes the plaintiff, by Dodge and Johnson and J. M. Moore, their solicitors, and come the defendants, by Hon. C. B. Moore, attorney general, and U. M. and G. B. Rose, their solicitors, and by
76 consent of parties it is ordered that this cause be continued until Friday, the 25th October, inst., subject to the stipulations and orders heretofore entered in this cause; and it is ordered that the restraining order heretofore made in said cause continue in force until said day or further order of the court.

FRIDAY, *Oct'r 26th*, 1883.

THE ST. LOUIS, IRON M'T'N AND SOUTHERN RAILWAY CO., Plaintiff,
vs.
J. H. BERRY *et al.*, as Board of R. R. Com'rs, Defendants. } 1645.

Comes the plaintiff, by J. M. Moore, Esq., their solicitor, and the defendants, by Attorney General C. B. Moore and U. M. and G. B. Rose, their solicitors, and the said defendants file the deposition of Geo. W. Hughes in this cause, whereupon by consent of the parties this cause is submitted to the court with leave to the parties to present argument on Wednesday, 31 inst.

Agreement for Deposition.

Pulaski Chancery Court, Arkansas.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN R'Y COMPANY
vs.
JAMES H. BERRY *et al.*

77 We agrée that depositions may be taken in this cause on behalf of the plaintiff, at the office of the St. Louis, Iron Mountain and Southern R'y Company, in the city of St. Louis, State of Missouri, before any officer, State or Federal, authorized by law to take depositions, without any commission or rule of court, between the hours of 9 a. m. and 4 p. m., on the 15th day of October, 1883, to be continued, if need be, at the same time and place between the same hours, from day to day, until the depositions are completed, the opposite party being allowed to take depositions at the same place and time.

This 5th day of October, 1883.

DODGE AND JOHNSON AND J. M. MOORE,
For Plaintiff.
U. M. AND G. B. ROSE & C. B. MOORE,
For Defendant.

STATE OF ARKANSAS:

Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JAMES H. BERRY *et al.*

Depositions of witnesses, Charles G. Warner and Stephen D. Barlow, taken before me, Millard F. Watts, a notary public within and for the city of St. Louis, in the State of Missouri, on the fifteenth day of October, 1883, between the hours of 9 a. m. and 4 p. m., at the office of the St. Louis, Iron Mountain and Southern
78 Railway Company, in the city of St. Louis, State of Missouri, pursuant to the annexed agreement, in an action pending in the Pulaski chancery court, State of Arkansas, wherein the St. Louis, Iron Mountain and Southern Railway Company is plaintiff and James H. Berry —— that are defendants, to be read in evidence on the part of the plaintiff. The St. Louis, Iron Mountain and Southern Railway Company appeared by its attorney, T. J. Portis, Esq.,

and the said defendants, James H. Berry *et. al.*, appear by their counsel, C. B. Moore, Esq.; and thereupon by consent the taking of said depositions is adjourned until to-morrow, the 16th day of October, 1883, then and there to be reserved at the time, place, and within the hours mentioned in the annexed agreement.

[SEAL.] MILLARD F. WATTS,
Notary Public.

ST. LOUIS, MISSOURI, *October 16th*, 1883.

Pursuant to adjournment as above stated, on this the 16th day of October, 1883, at the place and within the hours mentioned in the annexed aggreement, I resume the taking of said depositions, as follows:

Plaintiff and defendants, appearing by their respective attorneys, the plaintiff thereupon produced the following witnesses in the following order:

CHARLES G. WARNER, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth,
79 the whole truth, and nothing but the truth, deposes and says:

Direct examination:

1 Q. State your name, age, residence, and your relation to the plaintiff.

A. My name is Charles G. Warner; I am thirty-nine years old; I reside in the city of St. Louis, Missouri, and am general auditor of plaintiff, and have been such since October, 1881, and since that time have been the custodian of all the books and accounts of the plaintiff.

2 Q. State the cost of building and equipping that part of the main line of plaintiff's road which is located in the State of Arkansas, and was the Cairo and Fulton railroad before the consolidation under which the present organization was formed, including the right of way, stations, and all appurtenances of that nature.

A. The books show a cost of construction and equipment of the Cairo and Fulton road, up to the date of the consolidation, which was May 1st, 1874, as accepted, was $23,157,000.62. The total account of construction and equipment to December 31, 1882, for the four roads consolidated, namely, St. Louis and Iron Mountain, Arkansas branch; Cairo, Arkansas and Texas, and Cairo and Fulton, was $50,938,333.34.

At this point in the taking of said deposition, by consent of counsel the further taking of the same was adjourned until to-
80 morrow, the 17th day of October, 1883, then and there to be resumed at the place and within the hours mentioned in the annexed agreement.

[SEAL.] MILLARD F. WATTS,
Notary Public.

ST. LOUIS MISSOURI, *October* 17, 1883.

Pursuant to adjournment, as above stated, the taking of these depositions is resumed, this 17th day of October, 1883, at the place and

within the hours mentioned in the annexed agreement, as follows, both plaintiff and defendants appearing by their respective counsels:

CHARLES G. WARNER, in continuance of his deposition, deposes and says:

3 Q. Please state what portion of the $50,938,333.34, you have stated to have been the cost of the whole road and equipments up to December 31, 1882, belonged to the portion of the road in Missouri, and the portion in Arkansas, both.

A. In Missouri it was $24,721,030.23, and in Arkansas it was $26-217,303.11.

4 Q. How much of this 26,217,303.11 would be apportioned to the main line and to the branches in *in* the State of Arkansas?

A. To the main line $19,841,879.52; to the branches $6,375,423.59.

5 Q. State the average number of miles of the road operated in the State of Missouri and in Arkansas during 1882.

A. In Missouri 380, and in Arkansas 403.

81 6 Q. Please state the actual mileage of road in Missouri and in Arkansas December 31, 1882?

A. I answer this by referring to the statements of the engineer, attached to S. D. Barlow's deposition in this case, marked Exhibit "A."

7 Q. Please state the mileage of the main line and branches in Arkansas, so as to show how the total mileage of 403 miles is made up.

A. The following statement will show how I arrive at the average mileage operated during the year 1882.

(Here follows statement which forms page No. 5 of this deposition):

1882. Mileage.	Mo.	Ark.	Total.
St. Louis to State line, 12 months, 85 miles,	2,220		
State line to Texarkana, 12 months, 305 miles	------	3,660	
Mineral Point to Patosi, 12 months, 4 miles	48		
Bismark to Belmont, 12 months, 120 miles	1,410		
Poplar Bluff to Bird's Point, 12 months, 71 miles	852		
Knable to Gainsville, 1 month, M'ch	------	13	
Knable to Parmly, 1 month, Ap'l	------	20	
Knable to Harrisburg, 1 month, May	------	58	
Knable to Varndale, 1 month, June	------	76	
Knable to Forrest City, 6 months, 97 miles	------	582	
Forrest City to Helena, 12 months, 42 miles	------	21	
Guerden to Camden, 12 months, 34 miles,	------	408	
	12)4,560	12)4,838	12)9,398
Average mileage per year	380	403	783

Statement produced by Geo. W. Warner, Esq.

82 (In continuance to his answer to question 7, the witness says):

I multiply the number of miles of each branch by the number of months it was operated, and then add them all together and divide the whole by twelve, the number of months in a year, which gives the average miles operated during that year.

8 Q. Please state what you make the net income in Missouri, and the net income in Arkansas, that is applicable to a dividend on stock after payment of fixed charges.

A. I make the net income in Missouri $513,425.60; the net income in Arkansas $576,445.55.

9 Q. Providing the capital stock between Missouri and Arkansas on the same basis that has been used in ascertaining the net income, what would be the percentage of dividend on each part of said stock so divided?

A. The capital stock in Missouri would be $10,717,691.31, in Arkansas $11,366,393.69. The net income would be equal to $4\frac{79}{100}$ per cent. on that part of the capital stock in Missouri, and $5\frac{7}{100}$ per cent. on that part of the capital stock in Arkansas.

10 Q. Assuming the amount of the capital stock on that part of the road in Arkansas, which was formerly the Cairo and Fulton railroad, to be $2,000,000.00, what per cent. of that amount

83 would that portion of the net earnings for 1882, before stated, pay dividend thereon?

A. $4\frac{80}{100}$.

11 Q. State the average number of miles operated of the whole road in the year 1881.

A. 688.

12 Q. State whet part of that number of miles was in Arkansas and in Missouri in 1881.

A. 308 miles in Arkansas and 380 in Missouri.

13 Q. State what was the net income in Missouri and the net income in Arkansas for 1881 that was applicable to a dividend on the stock after payment of fixed charges.

A. There was none on either part; the earnings were not sufficient to pay the interest on bonded indebtedness of either part of said road in Arkansas or in Missouri.

14 Q. State the average number of miles operated in both Missouri and Arkansas, in the year of 1880.

A. The average number of miles operated in Missouri was 380, and in Arkansas 305; the total 685.

15 Q. What was the net income in Missouri and the net income in Arkansas for 1880 that was applicable to a dividend on the stock after the payment of fixed charges?

A. There wa none on either part; the earnings were not sufficient to pay the interest on bonded indebtedness of either part of said road in Missouri or in Arkansas.

84 16 Q. State what was the bonded indebtedness for the year 1880, 1881, & 1882 of the plaintiff.

A. The bonded indebtedness for the year of 1880 was $30,097,012.50; for 1881, $31,794,929.71; for 1882, $33,929,901.27.

17 Q. State what part of said bonded indebtedness was contracted for expenditures on that part of the road in Arkansas, formerly the Cairo and Fulton railroad.

A. Dividing it by average miles operated it is for 1880 $13,400,-859.58; for 1881, $14,232,881.33; for 1882 it is $17,463,262.51.

18 Q. State what was the annual interest on the total indebtedness for each year on each portion, as you have divided it, between the States of Missouri and Arkansas, for the same periods.

A. For 1880, on the total amount, it was $2,085,598.50; in Arkansas, $928,624.15, for 1881 the total is $1,794,232.43; for Arkansas it is $803,231.97; for 1882 the total is $2,248,978.87; for Arkansas it is $1,157,520.45.

19 Q. What is the indebtedness of plaintiff, and what part thereof was contracted for expenditures on the Cairo and Fulton railroad in Arkansas, and what is the annual interest thereon?

A. In answer to that question, I attach hereto three statements, marked F, G, and H, each identified by my official signature.

85 20 Q. Has that part of plaintiff's road situated in the State of Arkansas, formerly the Cairo and Fulton railroad, ever paid any dividend or interest on the capital stock thereof, or on the amount expended in building or equipping the same?

A. Not to my knowledge.

21 Q. You have stated that the books show the cost of the Cairo and Fulton road in Arkansas to be $23,167,000.62. Please state what per cent. the net earnings for 1882 would pay on this amount.

A. About $2\frac{4}{10}$.

By consent of counsel the further taking of these depositions is adjourned until to-morrow, the 8th day of October, 1883, then and there to be resumed at the place and within the hours mentioned in the annexed agreement.

[SEAL.] MILLARD F. WATTS,
Notary Public.

ST. LOUIS, MISSOURI, *October 8th*, 1883.

Pursuant to adjournment, as above stated, the taking of these depositions is resumed, this 8th day of October, 1883, at the place and within the hours mentioned in the annexed agreement, as follows, both plaintiffs and defendants appearing by their respective counsel:

CHARLES G. WARNER, in continuance of his deposition, deposes and says:

86 Cross-examination:

1 X Q. You stated in your examination-in-chief that the cost of constructing and equipping the Cairo and Fulton road was, as shown by the books, $23,157,000.62. Was that the actual cost of construction, or does it include all expenses of negotiating bonds, etc., to raise money to build and equip the road?

A. The twenty-three million referred to does include the discount on bonds and, I think, the expense of negotiating them.

2 X Q. State as near as you can the actual cost of the construction of the Cairo and Fulton railroad in Arkansas, and as near as you can the amount of discounts, etc., on bonds to raise the amount.

A. The amount, $23,157,000.62, is the best answer I can give you as to the cost of that road at that time. I can't state what the amount of discount, etc., on the bonds was.

3 X Q. Were any of the branches of the road built in Arkansas at the date of the consolidation, May 1st, 1874? Please state when the branches were built.

A. As answer to the foregoing question I refer to Exhibit "A" to S. D. Barlow's deposition in this case.

4 X Q. You have stated that the total amount of construction and equipment account of the Arkansas portion of the road,
87 up to December 31st, 1882, was $26,217,303.11, and of this amount that 19,841,879.52 was apportioned in your calculation of the cost of the main line in Arkansas; please state how this is so, if the cost of construction and equipment up to May 1st, 1874, was $23,157,000.62.

A. I will state that in making division of the $26,217,303.11, in Arkansas, as between the main line and branches in Arkansas, the division was made on the average mileage basis, and does not show the actual cost of each; this method of division has been used in every case where a division was made of the earnings, expenses, indebtedness, construction, &c., in my answer to the preceding and following questions, this being the only possible way in which to make a division account in the time allowed; the cost as stated as of May 1st, 1874, of 23,157,000.62, was taken from the books as the actual cost at that date, of the Cairo and Fulton road in Arkansas.

5 X Q. Will you please file a statement, made from your books, and make it an exhibit to your deposition, showing for the year ending December 31st, 1882, the gross income from all sources of the Cairo and Fulton or Arkansas part of the road, gross operating expenses and net earnings; also all other expenses that you claim,
88 other than those of operating expenses of the road, and what items those other expenses of the road consist of; also showing what you claim as the net income and the clear net income of the road; also showing what you claim as the capital stock, and how you have apportioned it on the basis of mileage as stated in your examination-in-chief; also showing how you have apportioned the interest and coupon indebtedness as the basis of your calculations for percentage of interest or dividend for 1882. Let your statement also show income and expenses of all plaintiff's roads in Missouri so as to show the total number of miles, and the income and expenses of all the roads composing the railroads of plaintiff in both States.

A. In answer to this question I attach hereto statements giving the information desired, and mark them B, C, D, and E, and each verified by my official signature.

6 X Q. Please state what is the amount of the net income for

1882 of the maine line of the road in Arkansas on the basis of mileage as you have given; also of the gross income of main line; also the gross and net income of the branches, on the basis of mileage that you have used in your examination-in-chief.

89 A. Taking 403 miles as the average mileage in Arkansas operated, and dividing it as between the main line and branches, would be main line 305 miles, branches 98 miles; this would apportion the earnings on the following percentage: Main line, $75\frac{7}{100}$; branches, $24\frac{3}{100}$ per cent.; this would apportion the gross earning as follews: To the main line, $2,954,166.02; branches, $948,299.00; expenses main line, $1,455,465.63; branches, $467,210.22; net income main line, $1,312,612.26; branches, $421,353.74.

7 X Q. You have stated, in your examination-in-chief, that dividing the capital stock between the portions of the road in Missouri and Arkansas, on the basis of mileage of road in each State, the capital stock in Arkansas is $11,366,393.69, and the per cent of interest or dividend on that part would be $5\frac{7}{100}$, and, assuming the capital stock of the road in Arkansas to be $17,000,000.00, that the per cent. of interest would be $4\frac{80}{100}$. Now, if the capital stock on the Arkansas part of the road, which was formerly the Cairo and Fulton, is $1,500,000.00 please state what percentage of interest on that amount that portion of the net earnings before stated would pay as a dividend thereon for 1882.

A. Applying the net earnings for Arkansas, ascertained and stated above for 1882, to a capital of $1,500,000.00, it would produce a per centage of $38\frac{45}{100}$.

CHARLES G. WARNER.

90 STEPHEN D. BARLOW, of lawful age, being duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothiing but the truth, deposes, and says:

Direct examination:

1 Q. State your name and residence.

A. S. D. Barlow; I reside in St. Louis, Missouri, and am assistant secretary of the plaintiff, and am in charge of its lands in Missouri.

2 Q. How long have you sustained that relation?

A. I have been assistant secretary for about two years, and was secretary and assistant treasurer prior to that for about eight years.

3 Q. Had you any connection with the part of plaintiff's road in Arkansas known as the Cairo and Fulton railroad, prior to the date of the consolidation, May 1st, 1874?

A. I had no official connection.

4 Q. Can you state the cost of building and equipping that part of the railroad in Arkansas?

A. I cannot, from any personal knowledge, or from any books or accounts in my custody, except from heresay.

5 Q. State what branches have been constructed, if you know, by the plaintiff under the charter of the Cairo and Fulton Railroad

Company, the termini and length thereof, and the cost of
91 building and equipping each of the said branches, including the right of way, stations, and all appurtenances?

A. I can only answer that question by stating that I hereto attach a statement furnished and certified from the engineer's department, attested by the signature of J. B. Clemens, assistant engineer, and which I mark Exhibit A, sheets 1, 2, 3, 4, and 5, and attach to my deposition, which answers all the questions contained in the interrogatory.

6 Q. State, if you can, the amount of the capital stock of the Cairo and Fulton Railroad Company as represented in the present organization.

A. The amount of the capital stock of the Cairo and Fulton Railroad Company, as represented in the present organization, at the time of the consolidation in May, 1874, and up to the present time, is twelve millions dollars. I state this from my knowledge obtained while acting as register of the stock ever since that time, in other words having kept the stock books of the plaintiff during all that time in Missouri.

7 Q. Has that part of plaintiff's road situated in Arkansas, and formerly known as the Cairo and Fulton railroad, ever paid a dividend or interest on the capital stock, or on the amount expended in building and equipping said part of said road?

92 A. Never any dividend or interest on said twelve millions of capital stock heretofore mentioned, nor ever has paid any interest on the cost of the road as such since May 1st, 1874, the date of the consolidation.

8 Q. Was any such interest or dividend paid prior to the date of consolidation, to your knowledge?

A. There was none paid to my knowledge.

Cross-examination:

1 X Q. What was the amount of the capital stock of the Cairo and Fulton road in Arkansas issued at the date of the charter.

A. At the date of the charter, or soon after, the amount was $1,500,000.00.

2 X Q. When you say that the capital stock of the Cairo and Fulton road in Arkansas has never paid a dividend, do you mean that no dividend has ever been declared?

A. I mean that none has ever been declared or paid to my knowledge, either before or since the consolidation.

3 X Q. Can you tell at what time the main line in Arkansas was constructed?

A. I think in the latter part of 1873, or in the first part of 1874.

4 X Q. Please state, if you can, the sum for which lands of the Cairo and Fulton road has been sold in Arkansas.

93 A. From reports in my office, and not from any personal knowledge of my own, the total receipts to December 31, 1882, $973,567.94, the gross receipts; total expenses, $357,918.89; leaving a net receipt from the commencement to December 31st, 1882, $615,649.05.

5 X Q. State, as near as you can, the value of the lands unsold belonging to the Cairo and Fulton railroad in Arkansas.

A. I estimate the net value of the lands unsold at about one million dollars; the number of acres still unsold being 995,945 on the 31st of December, 1882.

STEPHEN D. BARLOW.

STATE OF MISSOURI, }
County of St. Louis, } ss:

I, Millard F. Watts, a notary public within and for the city of St. Louis, in the State of Missouri, do hereby certify that Charles G. Warren and Stephen D. Barlow was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by myself in presence of witnesses, and were respectively subscribed by said witnesses in my presence, and were taken at the time and place specified in the annexed agreement and on the days to which adjournments were had. And I further
94 certify that I am not a relative, counsel, or attorney of either party, or otherwise interested in the event of this action or proceeding.

Witness my hand and official seal, at said city of St. Louis, in said State of Missouri, this 19th day of October, 1883.

[SEAL.] MILLARD F. WATTS,
Notary Public.

Statement of the Length of Main Track of the St. Louis, Iron Mountain & Southern Railway in the State of Missouri, October 18, 1883.

Division.	Miles.
Main line, from 4th St. depot, St. Louis, to Missouri State line	184.62
"Belmont Branch," Bismark to Belmont	119.26
"Cairo Branch," Poplar Bluff to Bird's Point	70.50
"Potosi Branch," Mineral Point to Potosi	3.69
"Doniphan Branch," Neelyville to Doniphan	20.00
Total main track in State	398.07

J. B. CLEMENTS, *Ass't Eng'r.*

Exhibit "A" to deposition of S. D. Barlow. M. F. Watts, notary public. Sheet 1.

95 The St. Louis, Iron Mountain and Southern Railway main line, formerly "Cairo and Fulton R'y," from Missouri State line to Texas State line at Texarkana.

Total length of track exclusive of sidings, miles, 305.11.
Road was completed in 1874.

[SEAL.] J. B. CLEMENTS,
Sheet 2. *Ass't Eng'r.*

The "Crowleys Ridge Branch" of the St. Louis, I. M. & S. R'y.

From Knobel, Arkansas, to junction with Helena and Iron Mountain R'y, Forrest City, Ark.

Total length of track exclusive of sidings, miles, 97.44.

Construction of road commenced in Oct., 1881.

Certificate of completion issued on Aug. 28, 1882.

[SEAL.] J. B. CLEMENTS,

Sheet 3. *Ass't Eng'r.*

The "Louisiana Branch" of the St. L., I. M. & S. R'y.

From Guerdon, Ark., to Camden, Ark.

Total length *length* of track, exclusive of sidings, from Guerdon to Camden, miles, 34.03.

Construction of road commenced Sep., 1880.

96 Certificate of completion issued Dec. 2nd, 1881.

Cost of preparing road-bed, $173,951.72.

[SEAL.] J. B. CLEMENTS,

Sheet 4. *Ass't Engineer.*

The "White River Branch" of the St. Louis, Iron Mountain and Southern R'y.

From a point near Newport on main line to town of Batesville, Ark. Total length of track, excluding of sidings, miles, 26.66.

Construction of road commenced in September, 1882.

Certificate of completion issued March 29th, 1883.

Cost of preparing road-bed, laying track, erecting bridges, buildings, and water stations, $193,326.65. This does not include cost of rails or fastenings.

[SEAL.] J. B. CLEMENTS,

Sheet 5. *Ass't Eng'r.*

97 *St. Louis, Iron Mountain & Southern R'y.*

(111) 1882.	Missouri, 380 miles.	Arkansas, 403 miles.	Total, 783 miles.
Gross earnings	3,679,743 70	3,902,465 02	7,582,208 72
Gross operating expenses	1,868,798 73	1,979,789 17	3,846,587 90
Net earnings	1,812,944 97	192,265 85	3,735,620 82
Car trust expenses	37,214 82	39,467 29	76,682 11
Interest and exchange	31,517 34	33,424 97	64,942 31
Baring Cross bridge exp's U. S. Gov't lod tres. ac. land g't	35,011 98	------	35,011 98
Taxes on Arkansas trust lands	------	30,173 66	30,173 66
Taxes	64,295 20	------	64,295 20
Other expenses	40,021 61	31,943 97	71,965 58
Total expenses other than operating	208,060 95	188,709 85	3,966,770 80
Net income applicable to payment of previous deficit, coup nindebtedness, & dividend	1,604,844 02	1,733,906 00	3,338,850 02
Deficit from 1881	582,274 84	617,517 79	1,199,792 63

1882.	Missouri, 380 miles.	Arkansas, 403 miles.	Total, 783 miles.
Clear net income applicable to payment of 1882 coupons, indebtedness, and dividend	1,022,609 18	1,116,448 21	2,139,057 39
Capital stock	10,717,691 31	11,366,393 69	22,084,085 00

"B"

C. G. WARNER,
Gen'l Aud'r.

98 *St. Louis, Iron Mountain & Southern R'y.*

1882.	Missouri, 380 miles.	Arkansas, 403 miles.	Total, 783 miles.
Bonded debt	16,466,618 76	17,463,282 51	33,929,901 27
Cost of road and equipage	24,721,030 23	26,217,303 11	50,938,333 34
Do. do. Arkansas main line, 305 miles	------	19,841,879 52	
Do. do. Arkansas main branch, 98 miles	------	6,375,423 59	

"C."

C. G. WARNER,
Gen'l Aud'r.

Other Expenses.

Discount on gen'l cons'l'd r'y bonds, &c.		174,857 97
Less car service	38,710 62	
Dividends	10,245 00	
Pools	28,519 22	
Vouchers, pay-rolls, canc'l'd, &c.	14,917 55	
		92,392 39
		82,465 58
Prop't'n for Arkansas, $\frac{403}{783}$		42,443 97
Less dividand Baring Cross bridge stock		10,500 00
		31,943 97

"D."

C. G. WARNER,
Gen'l Aud'r.

99 *Account, Interest, and Coupon Indebtedness St. L., I. M. & S. R'y.*

1882.	Missouri, 380 miles.	Arkansas, 403 miles.	Total, 783 miles.
1st mortgage St. Louis & I. M't'n R. R.	135,887 60	144,112 40	280,000 00
2d do. do.	203,831 42	216,168 58	420,000 00
1s do. do. Ark B'ch	84,929 76	90,070 24	175,000 00
1-t do. C. A. and F. R. R.	49,259 26	52,240 74	101,500 00
1st do. Cairo and Fulton R. R.	262,942 50	278,857 50	541,800 00
Income m't'ge do	4,015 16	4,258 18	8,273 34
Gen'l cons'l'd r'y and land g't m't'ge	245,422 73	260,277 27	505,700 00
1st pref'd income mort'ge	65,146 38	69,089 45	134,235 83
2d do. do.	40,023 61	42,446 09	82,469 70
Total	1,091,458 42	1,157,520 45	2,248,978 87

"E."

C. G. WARNER,
Gen'l Aud'r.

Name of bond.	Date of issue.	Date of maturity.	Amount outstanding.	Rate of interest.	Interest. When payable.	Annual interest.		
						Missouri.	Arkansas.	Total.
First m'tg'e St Louis & Iron M't'n	Aug. 1, 1867	Aug. 1, 1892	4,000,000 00	7	Aug. & Feb.	155,328 47	124,671 53	280,000 00
Second " " "	May 1, 1872	May 1, 1897	6,000,000 00	7	May & Nov.	233,141 55	187,126 78	422,268 33
Arkansas B'ch, 1st m'tg'e, "	Ap'l 15, 1870	June 1, 1895	2,500,000 00	7	June & Dec.	97,080 29	77,919 71	175,000 00
Cairo & Fulton, 1st m'tg'e	Dec. 10, 1870	Jan. 1, 1891	7,900,000 00	7	Jan. & July	307,045 55	246,444 45	553,490 00
Cairo, Arkansas & Texas, 1st m'tg'e	June 1, 1872	June 1, 1897	1,450,000 00	7	June & Dec.	56,306 57	45,193 43	101,500 00
Cairo and Fulton, income	May 1, 1873	Aug. 1, 1888	73,000 00	8	Feb. & Aug.	6,146 56	4,933 44	11,080 00
1st preferred income, St. L. & I. M., 2nd			1,242,150 00	7				
" " Ark. B'ch, "			518,297 50	7				
" " C. A. & T., 1st m'tg'e			304,500 00	7				
" " C. & F. "			1,420,340 00	7		164,075 11	131,691 87	295,766 98
" " " income			19,220 00	7				
" " " cons'l'd			635,582 50	7				
2d " " " "			4,015,720 00	6		136,907 18	109,886 02	246,793 20
Gen'l cons'd r'y & l'd g't m'tg's	Ap'l 1, 1881	Ap'l 1, 1931						
" " frac. scrip.								
Funded interest certificates, Feb. 23, 1875			13,860 00					
" coupons, "			105 00			943 07	756 92	1,699 99
" " Nov. 27, 1878			4,237 50					
			30,097,012 50			1,156,974 35	928,624 35	2,085,598 50

"F."

C. G. WARNER, *Gen. Aud'r.*

Name of bond.	Date of issue.	Date of maturity.	Amount outstanding.	Rate of interest.	Interest. When payable.	Annual interest. Missouri.	Arkansas.	Total.
Third mort., St. Louis & Iron Mountain	Aug. 1, 1867	Aug. 1, 1892	4,000,000 00	7	Aug. & Feb.	154,651 16	125,348 84	280,000 00
Second do. do.	May 1, 1872	May 1, 1897	6,000,000 00	7	May & Nov.	231,976 74	188,023 26	420,000 00
Arkansas b'ch, 1 m't'g's, do	Ap'l 15, 1870	June 1, 1895	2,500,000 00	7	June & Dec.	96,656 98	78,343 02	175,000 00
Cairo and Fulton, 1st m't'ge	Dec. 10, 1870	June 1, 1891	7,782,000 00	7	Jan. & Jul.	301,995 06	244,774 94	546,770 00
Cairo, Arkansas, & Texas, 1st m't'ge	June 1, 1872	June 1, 1897	1,450,000 00	7	June & Dec.	56,061 05	45,438 95	101,500 00
Cairo and Fulton, income	May 1, 1873	Aug. 1, 1888	73,000 00	8	Feb. & Aug.	3,336 05	2,703 95	6,040 00
1st pref'd income, St. Louis & Iron M't'n, 2d m't'g			641,655 00	7				
Do., Ark. br'ch, do., do. do.			320,075 00	7				
Do., C., A., & F., 1 m't'ge			149,310 00	7				
Do., C. & F., do.			939,725 00	7		2,618 38	2,122 28	4,740 66
Do., C. and F., income			12,840 00	7				
Do., consol'd			404,967 50	7				
2d pref'd income, 1 m'tge			928,660 00	6				
Gen'l consol'd r'y and land-grant m't'ge	Ap'l 1, 1881	Ap'l 1, 1931	6,580,000 00	5	Ap'l & Oct.	136,286 34	110,463 66	246,750 00
Do. do. frac'l scrip			10,697 21					
Funded interest certificates, Feb'y 23, 1875								
Do. coupons, " "						493 25	399 77	893 02
Do. do. Nov. 27, 1878								
			31,792,929 71			991,000 51	803,231 97	1,794,232 48

"G."

C. G. WARNER, *Gen'l Aud'r.*

Name of bond.	Date of issue.	Date of maturity.	Amount outstanding.	Rate of interest.	Interest When payable.	Annual interest. Missouri.	Arkansas.	Total.
First m't'ge, St. L. & Iron M't'n	Aug. 1, 1867	Aug. 1, 1892	4,000 000 00	7	Aug. & Feb.	135,887 60	144,112 40	280,000 00
Second " " "	May 1, 1872	May 1, 1897	6,000,000 00	7	May & Nov.	203,831 42	216,168 58	42,000 00
Ark b'ch, 1st, " "	Ap'l 15, 1870	June 1, 1895	2,500,000 00	7	June & Dec.	84,929 76	90,070 24	175,000 00
Cairo and Fulton, 1st m't'ge	Dec. 10, 1870	Jan. 1, 1891	7,725,000 00	7	Jan. & July	262,942 50	278,857 50	541.800 00
Cairo, Arkansas, & Texas, 1st m't'ge	June 1, 1872	June 1, 1897	1,450,000 00	7	June & Dec.	49,259 26	52,240 74	101,500 00
Cairo and Fulton, income	May 1, 1873	Aug. 1, 1888	73,000 00	7	Feb. & Aug.	4,015 16	4,258 18	8,273 34
1st pr'f'd income, St. L. and I. M., 2nd			196,980 00	7				
" " Ark. b'ch			121,222 50	7				
" " C., A. & F., 1st m't'ge			63,420 00	7				
" " C. and F., "			357,645 00	7		65,146 38	69.089 45	134,235 83
" " " income			2,420 00	7				
" " cons'l'd m't'ge			89,862 50	7				
2d " " "			115,000 00	6		40.023 61	42,446 09	82,469 70
Gen'l cons'l'd r'y & l'd g't m't'ge	Ap'l 1, 1881	April 1, 1931	11,230,000 00	5	Ap'l & Oct.	245,422 73	260,297 27	505,700 00
Do. do. frac. scrip			5,351 27					
			33,929,901 27			1,09-,458 42	1,157,520 45	2,248,978 87

H.

Opened, filed, and published Oct. 22d, 1883.

C. G. WARNER, *Gen'l Auditor.*

J. W. CALLOWAY, *Clerk.*

103 WEDNESDAY, *Oct.* 31, 1883.

ST. LOUIS, IRON M. & S. R'Y COMPANY
vs.
BOARD OF RAILROAD COMMISSIONERS. } 1645.

This cause having been, at a former day of the present term, set down for argument on this day, and the defendants being present by counsel, U. M. & G. B. Rose, and plaintiff's solicitor, J. M. Moore, failing to appear, it is ordered by the court that said argument be postponed until to-morrow.

THURSDAY, *Nov.* 1*st*, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO.
vs.
BOARD OF RAILROAD COMMISSIONERS FOR STATE OF ARKANSAS. } 1645.

Comes the plaintiff, by J. M. Moore, Esq., and Messrs. Dodge and Johnson, its solicitors; come also the defendants, by Hon. C. B. Moore, attorney-general, and Messrs. U. M. and G. B. Rose, their solicitors, and, by agreement of the parties, copies of the acts of the General Assembly of the State of Missouri, entitled "An act to authorize the consolidation of railroad companies owning connecting railroads in adjoining States," approved March 2d, 1867, is filed, and, by leave of the court, the defendants file certified copy by the secretary of
State of section ten (10) of an act of the General Assembly
104 of the State of Arkansas, entitled "An act to incorporate the Cairo and Fulton Railroad Company," approved January 12th, 1853; and also agreement of counsel, in writing, signed by the consent of the parties.

"A."

Pulaski Chancery Court.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY
vs.
JAMES H. BERRY *et al.*

It is agreed between the parties that on the trial of this cause the following facts shall be mutually conceded:

1. That on January 1, 1874, the main line of the Cairo and Fulton railroad was completed and was in actual operation.

2. That on the 11th day of March, 1874, the St. Louis and Iron Mountain Railroad Company and the Cairo, Arkansas and Texas Railroad Company, two corporations created by the laws of Missouri, were consolidated, in accordance with the laws of that State, by mutual consent.

3. That the consolidated company thus formed was consolidated with the Cairo and Fulton Railroad Company, by mutual consent, on the 30th day of April, 1874, forming thereby the St. Louis, Iron Mountain and Southern Railway Company aforesaid, which

105 consolidation is evidenced by certain papers, of which the following are copies:

Board of Directors.

OFFICE OF THE ST. LOUIS AND IRON MOUNTAIN
RAILROAD COMPANY, ST. LOUIS, *April* 30, 1884.

Extract of proceedings of board of directors of said company at the above date.

Resolved, that this company will enter into an agreement with the Cairo and Fulton Railroad Company for consolidating the St. Louis and Iron Mountain Railroad Company with the Cairo and Fulton Railroad Company on the basis recommended by the several committees of the railroad companies on this question, which is recognized in the form of agreement submitted for execution.

Resolved, further, that the president of the company be, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company, at their meeting called to be holden on Friday, the first day of May ensuing, and that when said agreement is so approved in stockholder's meeting, he cause the same to be carried into effect by calling in certificates of stock of the old company outstanding and having them exchanged for stock in the new company, according to the terms of said agreement.

106 Resolved, that the name of the new consolidated company shall be "St. Louis, Iron Mountain and Southern Railway Company."

Stockholders' Meeting.

ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,
ST. LOUIS, *May* 1*st*, 1874.

Copy of resolution adopted at the stockholders' meeting of said company on the above date.

"Resolved, that the agreement executed on behalf of the St. Louis and Iron Mountain Railroad Company of Missouri by Thomas Allen, president of said company, under and by authority of a resolution of the board of directors of said company and now submitted for approval and adoption by the stockholders of this company, be and the same is hereby approved and adopted, and that the president and directors of this company are hereby directed to carry into effect the provisions thereof, whenever said agreement shall have been executed by the said Cairo and Fulton Railroad Company, and approved by the stockholders of said company."

Directors' Meeting.

CAIRO AND FULTON RAILROAD COMPANY,
LITTLE ROCK, MONDAY, *May* 4, 1874.

The following is an extract of the proceedings of the board
107 of directors of said company of the date aforesaid:

Resolved, that this company will enter into an agreement

with the St. Louis and Iron Mountain Railroad Company for uniting and consolidating this company with the said St. Louis and Iron Mountain Railroad Company, and for making joint stock of the two companies and forming one board of directors for the management of the affairs of said companies on the basis jointly recommended by the committees on consolidation, and embracing in the agreement executed by the said St. Louis and Iron Mountain Company, and now here submitted for execution on the part of this company.

Resolved further, that the president of this company be, and he is hereby, authorized and directed to execute the agreement submitted, to be, however, subject to the approval and confirmation of the stockholders of this company, called to be holden on Monday, the 4th day of May inst., or any other day thereafter, and when approved that the president cause the same to be carried into effect, and call in the certificates of stock in this company outstanding, and exchange them for stock in the new company according to the terms of the agreement.

CAIRO AND FULTON RAILROAD COMPANY,
MONDAY, *May 4th*, 1874.

108 Copy of resolution adopted at the meeting of stockholders of said company on the above date:

"Resolved, that that the agreement for consolidation of the Cairo and Fulton Railroad Company with the St. Louis and Iron Mountain Railroad Company, which has been executed on behalf of this company by Thomas Allen, president, under and by authority of a resolution of the board of directors of this company, and now here submitted to this meeting for approval and adoption by the stockholders of this company, be, and the same is hereby, approved and adopted."

Memorandum of an agreement made and entered into this 13th day of April, in the year of our Lord one thousand eight hundred and seventy-four, by and between the St. Louis and Iron Mountain Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri, party of the first part, and the Cairo and Fulton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Arkansas, party of the second part:

Whereas the party of the first part owns and operates a line of railroad extending from the city of St. Louis southward to the boundary line between the States of Missouri and Arkansas,
109 where it intersects the railroad of the party of the second part; it also owns and operates a line of railroad running from Bismark to Belmont, and also owns and operates a line of railroad running from Poplar Bluff eastward to the Mississippi river, at a point opposite the mouth of the Ohio river, and a branch railroad from Mineral Point to Patosi, all in the State of Missouri. And the party of the second part owns and operates a line of railroad extending from the boundary line between the States of Missouri and Arkansas, where it forms a junction with the line of railroad with the

party of the first part, through the cities of Little Rock and Fulton, to the town of Texarkana, upon the boundary line between the States of Arkansas and Texas, and the said railroads form continuous and connecting lines of railroads with each other so connected as to admit the passage of burden and passenger cars over each continuously without change, break, or interruption.

And whereas the said parties are authorized by the laws of the several States aforesaid to consolidate their capital, stock, franchises, and property together, and become one corporation; and it is believed that such consolidation will be beneficial to the stockholders of each of said corporations, and to the public.

Now, therefore, this agreement witnesseth that the said par-
110 ties of the first and second parts hereto, by their respective boards of directors, duly convened, have agreed, and do hereby agree, to merge and consolidate the capital stock, franchises, and property of the said two corporations, so that the same shall become the capital, stock, franchises, and property of one corporation; and for that purpose do hereby make and prescribe the following terms and conditions of such merger and consolidation, and the mode of carrying the same into effect:

ARTICLE I.

The name of the new corporation shall be "St. Louis, Iron Mountain and Southern Railway Company."

ARTICLE 2.

SECTION 1. The directors of the said new corporation shall be thirteen in number, and the officers thereof shall consist of a president, one or more vice-presidents, a secretary, and a treasurer, and such other as may by the board of directors be deemed necessary. All the directors shall be severally stockholders of the corporation, and qualified to vote for directors at the election at which they shall be chosen.

The offices of secretary and treasurer may be filled by one and the same person.

SECTION 2. The following-named persons, who reside, respectively, at the places set opposite their several names, shall be the
111 first directors of the new corporation, that is to say:

1. Thomas Allen, St. Louis, Mo.
2. Henry G. Marquand, New York.
3. George Cabot Ward, New York.
4. William Tilden Blodgett, New York.
5. H. L. Higginson, Boston, Massachusetts.
6. William H. Swift, New York.
7. Sylvester H. Laughlin, St. Louis, Mo.
8. William Russell Allen, St. Louis, Mo.
9. Stephen P. Barlow, St. Louis, Mo.
10. James M. Loughborough, Little Rock, Ark.
11. Gerard B. Allen, St. Louis, Mo.

12. Samuel Capp, St. Louis, Mo.
13. U. M. Rose, Little Rock, Ark.

And the following persons, who reside respectively at the places set opposite their several names shall be first officers of the said new corporation, as below designated, that is to say:

President, Thos. Allen, St. Louis, Mo.
Vice-president, Henry G. Marquand, of New York.
Secretary, Stephen D. Barlow, of St. Louis, Mo.
Treasurer, D. W. McWilliams, of New York.

SEC. 3. The directors and officers shall continue to be such until the first Tuesday of March, in the year 1875, and until others are duly elected and chosen in their places and qualified.

112 ARTICLE III.

SEC. 1. The first annual election of said new corporation shall be held at the office of said corporation in the city of St. Louis, on the first Tuesday in March in the year 1875, and elections shall be held annually thereafter: notice of the time and place of each and every election shall be given by the secretary as prescribed by the company's by-laws.

SEC. 2. At each annual election there shall be chosen by a majority of the votes of the stockholders voting in person or by proxy thereat thirteen directors, who shall continue in office until others are elected and qualified in their places.

SEC. 3. The election by stockholders shall be conducted by the judges or inspectors thereof, to be appointed by the board of directors, or in case of their omission to do so, then by the stockholders qualified to vote at said election, neither of whom, however, shall be competent to be elected to any other office of the company at such election.

SEC. 4. At all elections each stockholder shall be entitled to vote on every share of stock standing in his name on the books of the corporation not less that thirty days previous to such election.

SEC. 5. In the event of a failure to elect directors, or to
113 hold the annual meeting therefor, said *said* new corporation shall not be thereby dissolved, but the directors for the time being shall continue such until the next annual election, or until their successors shall be elected in the manner which may be provided for in the by-laws of the company, not inconsistent with the provisions of this agreement.

SEC. 6. Vacancies in the board of directors may be filled by remaining directors at any regular meeting of board, or at any meeting duly convened in accordance with provisions of the by-laws of the corporation.

SEC. 7. As soon after each annual election as may be, the directors shall elect one of the number as president and another as vice-president, and shall appoint or provide for the appointment of all other necessary officers and agents, who shall serve until other persons are duly chosen in their places.

ARTICLE IV.

SEC. 1. The captal stock of the corporation shall consist of $26,500,000, divided into 265,000 shares of $100 each.

SEC. 2. Every stockholder in each of the corporations, parties hereto of the first and second parts, shall receive in place of stock held by him in said corporations stock in the new corporation as follows, to wit, for each share of stock held in the St. Louis and Iron Mountain Railroad Company, he shall receive one share
114 of stock in the "St. Louis, Iron Mountain and Southern Railway Company"; and for each share of stock held in the Cairo and Fulton Railroad Company, he shall receive sixty-hundredths of one share in the St. Louis, Iron Mountain and Southern Railway Company.

ARTICLE V.

Before any person appointed or elected treasurer of the new corporation shall enter upon the performance of the duties of the office, he shall execute a bond with such sureties and in such sum as shall be fixed and approved by the board of directors, conditioned for the faithful performance of the duties of his office.

ARTICLE VI.

SEC. 1. Upon the making and perfecting of this agreement and act of consolidation, and upon the adoption and ratification thereof by two-thirds of the votes of all the stockholders of the respective corporations parties hereto, and upon the filing of the same, or a copy thereof, in the manner prescribed by law, the parties hereto shall be deemed and taken to be one corporation by the name provided in this agreement, and shall possess within the several States into and through which its railroad, or any part thereof, or its branches or leased lines, may run, all the rights, priviileges, and franchises of each of the said corporations so consolidated.
115 SEC. 2. Upon the consummation of said act of consolidation, as provided by law, all and singular the rights, privileges, and franchises of each of said corporations parties hereto, and all other property, real, personal, and mixed, and all debts due on whatever account, as well stock subscriptions as all other things in action belonging to each and every of said corporations, parties hereto, shall be taken and deemed to be transferred to and vested in the "St. Louis, Iron Mountain and Southern Railway Company," as such new corporation, without further act or deed, and all property, all rights of way, and all and every other interest shall be as effectually the property of this new corporation, without further conveyance or assurance, as they were of the former corporations parties hereto; and all rights of creditors, and all liens upon the property erected by either of the said corporations shall be preserved unimpaired, notwithstanding said merger and consolidation, and all debts, liabilities, obligations, and duties of either of said corporations parties hereto, shall thenceforth attach to the said new corporation

and be enforced against it to the same extent and in the same manner as if said debts, liabilities, obligations, and duties had been incurred or contracted by it.

And the board of directors of said company shall have full
116 power and authority to borrow such sums of money, and in such form, as they may deem proper, to pay off the present debts and liabilities so assumed by the corportion hereby created, and to meet other exigencies of the company, and to secure the payment thereof by a mortgage or mortgages on the property and franchises of said company or any part thereof.

The by-laws which may be adopted by concurrent resolution of stockholders' meetings of said companies, parties hereto, shall be the by-laws of said consolidated company, subject to repeal or amendment as therein or by law provided.

In testimony whereof, the directors of the several corporations, parties hereto, have caused these presents to be signed in the names thereof by their respective presidents, and their several corporate seals to be affixed thereto, this 30th day of April, A. D. 1874.

[SEAL.] THE ST. LOUIS AND IRON MOUNTAIN R. R. CO.,
By THOS. ALLEN, *President.*

Attest: S. D. BARLOW, *Secretary.*

[SEAL.] CAIRO AND FULTON R. R. CO.,
By THOS. ALLEN, *President.*

Attest: W. R. DONALDSON, *Secretary.*

117 4. That the location and lines of said railroads are correctly stated in the papers copied above.

5. That immediately after said last named consolidation the plaintiff herein prepared and published a printed pamphlet, containing a copy of the Missouri statute, authorizing the consolidation of the two Missouri companies, and copies of certain Arkansas statutes, as follows:

(A.) Section 48 of "An act to provide for a general system of railroad incorporation," approved July 23, 1868.

(B.) Section 10 of "An act to incorporate the Cairo and Fulton Railroad Company," approved January 12, 1853.

Said pamphlet also contains a copy of all proceedings whereby said consolidations were effected, and the by-laws of the plaintiff in this suit.

6. Since said consolidation proceedings the plaintiff has built several branches to its main line in this State, including in all about —— miles, costing about the sum of $——; and the branch from Newport to Batesville has been built within a year next before the commencement of this suit.

C. B. MOORE, *Att'y Gen'l.*
U. M. AND G. B. ROSE,
DODGE AND JOHNSON, &
J. M. MOORE, *for Pl'ff.*

118 Filed in open court Nov. 1st, 1883.
"A." J. W. CALLAWAY, *Clerk.*

"B."

Here is marked on the margin "Introduced evidence."

STATE OF ARKANSAS, } ss:
In the Supreme Court, }

Copy.

"It is further agreed, that the Cairo and Fulton Railroad Company was, on the 30th day of April, 1874, consolidated with the St. Louis, Iron Mountain Railroad Company, in accordance with the laws of the State of Arkansas, and that said companies comprise, compose, and form the St. Louis, Iron Mountain and Southern Railroad Company, and that said last mentioned company is, and has been, the owner of, and entitled to all the franchises and privileges and immunities of, the Cairo and Fulton Railroad Company at the time of said consolidation."

In testimony that the foregoing is an extract correctly copied from the bill of exceptions filed in the case of Zimmer *vs.* State of Arkansas, decided by the supreme court of Arkansas at its
119 November term, 1875, and reported in the 30th volume of the Arkansas Reports, p. 677, under the title of Zimmer *vs.* State, as the same appears in the transcript of the record on file in my office in said case:

I, Luke E. Barber, clerk of said court, hereto set my hand and affix the seal of said court, at my office in the city of Little Rock, this the 30th day of October, A. D. 1883.

[SEAL.] LUKE E. BARBER, *Clerk,*
By P. D. ENGLISH, *D. C.*

Filed in open court Nov. 1st, 1883.
J. W. CALLAWAY, *Clerk.*

"C."

An act to incorporate the Cairo and Fulton Railroad Company.

SECTION 10. Said corporation shall have power to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States, and its southern end with any road coming in from Texas, at such point on the boundary line which divides that State and Arkansas, that may be deemed most eligible. And to make any contract or agreement with any other railroad company in reference to their business, that may best
120 ensure the early construction of said road, and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs, if it should be found necessary to facilitate the early construction of their said road, the contract or agreement of the respective boards shall form a part

of their respective charters whenever the same may be entered into, and recorded with their charters.

Approved 12th January, 1853.

OFFICE OF SECRETARY OF STATE,
LITTLE ROCK, ARKANSAS.

I, Jacob Frolick, secretary of State of Arkansas, do hereby certify that the annexed pages contain a true, complete, and full copy, including punctuation, of section ten (10) of an act of the General Assembly of the session of 1852–3, entitled "An act to incorporate the Cairo and Fulton Railroad Company," approved January 12th, 1853, as appears by comparing the same with the original roll of said act now on file in this office.

In testimony whereof I have hereto set my hand and
121 affixed my official seal at Little Rock, this 20th day of October, A. D. eighteen hundred and eighty-three.

[SEAL.] JACOB FROLICK,
Secretary of State.
By ——— ———, *Deputy.*

Filed in open court Nov. 1st, 1883.

J. W. CALLAWAY, *Clerk.*

"D."

"An act to authorize the consolidation of railroad companies owning connecting railroads in adjoining States."

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That any railroad company organized under the general or special laws of this State, whose track shall, at the line of the State, connect with the track of railroad of any company organized under the general or special laws of any adjoining State, is authorized to make and enter into any agreement with such connecting company for the consolidation of the stock of the respective companies, whose track shall be so connected, making one company of the two, whose stock shall be so consolidated upon such terms and conditions and stipulations as may be mutually agreed
122 between them, in accordance with the laws of the adjoining State in which the road is located with which the connection is thus formed.

SEC. 2. Such consolidation shall not be made, however, unless the terms and provisions thereof shall be approved by a majority of the stock, or the holders of a majority of the capital stock in each of said companies, whose stock shall be consolidat*ion* at some meeting called expressly for that purpose, or by the approval of the same by the holders of the same amount of stock in each of said companies in writing and signed by them.

SEC. 3. When the terms of said consolidation shall have been agreed upon as above stated, and approved in one or other of the modes above set forth, it shall be competent for the boards of directors in each of said connecting companies to carry the same into

effect, and adopt by a resolution a new corporate name for the company which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company as may have been agreed by the terms of the consolidation, and a copy of said consolidation agreed by the terms of the consolidation, and a copy of the said consolidation agreement and the resolutions of consoli-
123 dation and the name adopted for the company shall be filed with the secretary of State, and shall be conclusive evidence of such consolidation, and of the corporate name of the consolidated company: Provided, That whenever at any place on the line of this State two or more railroads are competing for the business to or from any railroad in an adjoining State, and a consolidation of either of such competing roads with the road in an adjoining State would diminish or prevent such competition, then and in such case consolidation shall not be permitted under this act; and in case any railroad in this State shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight-cars without breaking bulk upon said consolidated road, and said consolidated road shall transact the business of said intersecting or connecting road or roads on fair and reasonable terms, and the same may be enforced by appropriate legislation: And provided further, That the State reserves to itself the right to guarantee to any road that may hereafter be built to any such point the right to make a fair contract for the transportation of freight and passengers with such consolidation roads, and in case any such railroad
124 shall consolidate, or attempt to consolidate, with a connecting road contrary to the provisions of this act, any person or party aggrieved may bring action against them in the circuit court of any county through which such road may pass, which court shall have jurisdiction in the case, and power to restrain by injunction or otherwise.

SEC. 4. Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this State which may then be consolidated with one in the adjacent State as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State as if the consolidation had not taken place.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved March 2, 1869.

Filed in open c't, Nov. 17, 1883.

J. W. CALLAWAY, *Clk*,
By S. R. BROWN, *D. C.*

125 *Agreement for Depositions.*

In the Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., Plaintiffs.
vs.
JAMES H. BERRY as Governor *et al.*, Board of Railroad Com'rs, Defendants.

We agree that depositions may be taken in this case on behalf of the defendants at the law office of U. M. & G. B. Rose, in the city of Little Rock, State of Arkansas, before any officer, State or Federal, authorized by law to take depositions, without any commission or rule of court, between the hours of 9 a. m. and 4 p. m. on the 25th day of October, 1883, to be continued, if need be, at the same place and between the same hours, from day to day, until the depositions are completed, the opposite party being allowed to take depositions at the same place and time.

This 25th day of October, 1883.

DODGE AND JOHNSON AND J. M. MOORE,
For Plaintiff.
U. M. AND G. B. ROSE AND C. B. MOORE,
For Defendants.

126 The deposition of George W. Hughes, taken by agreement, hereto appended, at the law office of U. M. and G. B. Rose, in the city of Little Rock, Arkansas, on the 25th day of October, A. D. 1883, to be read as evidence in an action in which the St. Louis, Iron Mountain and Southern Railroad is plaintiff, and James H. Berry *et al.*, Board of Railroad Commissioners for the State of Arkansas, are defendants, pending in the Pulaski chancery court.

GEO. W. HUGHES, being duly sworn, testified as follows:

I live in Little Rock. I have been living in this State all my life. I am 53 years of age. I have been a civil engineer the most of my life. I have been engaged in surveying and building railroads in this State. I located the Cairo and Fulton railroad from the Missouri State line to Red river, and was on the preliminary survey of the road in 1852, 1853, and 1854, from Cairo to Texas. I am acquainted with the cost and construction of the roads of which I have had the management, that was parts of the Little Rock, & Ft. Smith railway, and the Little Rock, Mississippi River and Texas Railway, and was also division engineer of the Cairo and Fulton railway. In these capacities I made estimates of the cost of constructing the roads. The length of the division
127 of the Cairo and Fulton R. R. I had the charge of as engineer, was about 43 miles; afterwards 20 miles of it was turned over to my assistant, Henry C. West. I also made an estimate of the cost of the whole of the Cairo and Fulton road, and I think it was on that estimate that the contractors made their bid, but do not know this fact. I do not know the amount of the bid of the contractors. I made that estimate at the request of the chief

engineer, James H. Morley. I don't think any other estimate was made, and am certain none were made in detail. I am familiar with the main line of the Cairo and Fulton R. R. in the State of Arkansas. I do not remember the amount of my estimate. At the time the Cairo and Fulton road was built it was just previous to the panic of 1873; prices were inflated; gold was at a premium; common R. R. laborers commanded $2.25 per day; now they get $1.50 per day for the same work. Railroad iron was also as much higher in proportion as the labor. Leaving out the Arkansas river bridge which I understand was not a part of the road, the cost would be near $20,000 per mile, including every expense; I don't think it would be over $20,000. I judge that from the fact that the last 20 miles we built of the Little Rock, Mississippi and Texas Railroad cost

128 $13,000 per mile, which included a wrought iron draw-bridge across Saline river, the necessary depots, section houses, switches, &c. In my estimate above of $20,000 per mile, I do not include the cost of ballasting the road. The cost of ballasting would vary from 8 to 12 hundred dollars per mile. I would put the average at 12 hundred dollars per mile. I do not know what proportion of miles of the road has been ballasted. I know the road is not all ballasted. My estimate of $20,000 per mile covers everything except the ballast and the rolling-stock as it was when the road was first built and put in operation. Since then some iron bridges have been built and some steel rails put on the road, the cost of which is not included in said estimate. When the road was first built, some of the bridges were wood and the rails were all iron. At the time the steel rails were laid down, they cost less than the iron at the time they were put down. There has also been an improvement in putting in stone piers in place of wooden ones. The total increase of cost of these stone piers and iron bridges over those first put in would not exceed a thousand dollars per mile of the main line.

Cross ex.:

129 I have not been connected with the Cairo and Fulton R. R. since its construction, except to make a survey to Hot Springs and to locate the Camden Branch.

I merely estimate the difference in the cost of wooden bridges and iron and wooden piers and masonry. I cannot say definitely what the entire cost would be if the iron bridges and masonry that have been put up since the construction of the road. The work turned over by the contractors was not all of a permanent character; there were no iron bridges or masonry. The road-bed was of a permanent character. The average cost of buying and laying steel rails and repairing them, instead of the iron rails, would cost about $6,000.00 per mile. Large additions in the way of side tracks have been built on the road, but no large additions in the way of station houses have been made. I can make no estimate of the cost of the additional side tracks and station houses.

Redirect ex.:

I do not think that the iron bridges and stone piers above re-

ferred to could have been put in for $1,000.00 per mile. When I spoke of the $1,000.00 per mile I meant to give the difference between the cost of the original structures and those afterwards replaced with iron and stone. I think $1,000.00 per mile ample
130 to cover that difference. I think that the rolling-stock used on the road soon after it was put in operation may be fairly estimated at $3,500.00 per mile.

I estimate the total cost of the road as follows:

305 miles roadway, including station houses, side tracks, tanks, &c., at $20,000.00 per mile	$6,100,000 00
Difference in iron bridges and masonry and the wooden structures first built, say	305,000 00
Rolling-stock when road was first operated	1,067,500 00
200 miles of ballast at, say, $1,200.00	240,000 00
Total	$7,712,500 00

2 Re X ex.:

I do not know how much rolling-stock was put on the road when it was first put in operation. I have no experience in the transportation department of railroads, and have never been engaged in that department except temporarily.

GEO. W. HUGHES.

STATE OF ARKANSAS, }
County of Pulaski, } *ss:*

I, W. B. Hughes, a notary public within and for the county of Pulaski, do certify that the foregoing deposition of George W. Hughes was taken before me, and was read to and subscribed
131 by him in my presence, at the time and place and in the action mentioned in the caption, the said George W. Hughes having been first duly sworn by me that the evidence he should give in the action should be the truth, the whole truth, and nothing but the truth, and his statements reduced to writing by me in his presence, both plaintiff and defendants being present by attorneys at said examination.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal, this 25th day of October, A. D. 1883.

[SEAL.] W. B. HUGHES,
Notary Public.

Notary's fees, $2.00, paid by the defendants.

W. B. HUGHES, *N. P.*

Opened, filed, and published this Oct. 26, 1883.

J. W. CALLOWAY, *Clerk.*

MONDAY, *Nov'r* 5, 1883.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Plaintiff,
vs.
JAMES H. BERRY, Governor, JACOB FROLICK, Secretary of State, and A. W. FILES, Auditor, as Board of Railroad Commissioners, Defendants. } 1645.

This cause having been submitted and argued by John M.
132 Moore, Esq., and Dodge and Johnson, Esq'rs, for plaintiffs, and C. B. Moore, attorney general, and by U. M. and G. B. Rose, Esq'rs, for said defendants, and the court now being fully advised in the premises, and of the proper decree to be rendered herein, it is now ordered, considered, and decreed herein that the complaint herein be dismissed for want of equity, and that the plaintiff pay all the cost of this suit; and said plaintiff prays an appeal to the supreme court, which is granted; and in order that plaintiff may have time to make application to the supreme court for further orders herein as it may be advised, it is ordered that the restraining order heretofore made in this case be continued in force until the 20th day of December, 1883; and it is ordered that in making the transcript herein for the supreme court the clerk include therein the complaint and exhibits, the answer and agreement of counsel, marked "A," the depositions of Charles G. Warner and Stephen G. Barlow, with exhibits thereto, the *the* deposition of George W. Hughes, a copy of a part of the bill of exceptions in the case of Zimmer *vs.* State, marked "B," a certified copy of section 10 of the charter of the Cairo and Fulton Railrord Company, marked O, and a copy
133 of a statute of the State of Missouri, marked D, all being on file and a part of the record herein, as well as the opinion of the chancellor in this cause.

134 In the Pulaski Chancery Court.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY, Plaintiff,
v.
JAMES H. BERRY, as Governor, JACOB FROLICH, Secretary of State, and A. W. FILES, Auditor, as the Board of Railroad Commissioners for the State of Arkansas, and JACOB FROLICH, as Secretary of State, Defendants.

This is an action to restrain the defendants from assessing the road fixtures and appurtenances of the plaintiff, for the purpose of taxation, under the provisions of an act entitled "An act to revise and amend the revenue laws of Arkansas," approved 31st of March, 1883.

The plaintiff alleges that its property is exempt from taxation by virtue of the eleventh section of an act of the General Assembly, approved 12th of January, 1853, incorporating the Cairo and Fulton Railroad Company. That the plaintiff is a corporation organized under the provisions of the tenth section of that incorporating act, and now possesses and has a right to all the privileges, rights,
135 franchises, and immunities, including the exemption from

taxation, which were granted to the Cairo and Fulton Railroad Company by the charter granted January 12, 1853. The tenth section of that charter, as taken from the original enrolled act on file in the office of the secretary of State, reads as follows:

"SECTION 10. Said corporation shall have power to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States, and its southern end with any road coming in from Texas, at such point on the boundary which divides that State and Arkansas that may be deemed most eligible, and to make any contract or agreement with any other railroad company in reference to their business that may best insure the early construction of said road and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs, if it should be found necessary to facilitate the early construction of their said road; the contract or agreement of the respective boards shall form a part of their respective charters whenever the same may be entered into and recorded with their charters."

A certified transcript of the proceedings of the St. Louis and Iron Mountain Railroad Company of Missouri, and also of the proceedings of the Cairo and Fulton Railroad Company of Arkansas, with the articles of agreement between the two railroad companies, under which the two companies were consolidated and formed one distinct railroad company, called the "St. Louis, Iron Mountain
136 and Southern Railway Company," the plaintiff in this suit, is filed and made part of the evidence in this case as Exhibit "A" to the bill.

Before proceeding to consider the issues joined in this case, I refer to the case of Zimmer *v.* The State, in 30 Ark. The court in that case decided that the articles of consolidation above mentioned were entered into by virtue of the tenth section of the charter granted to the Cairo and Fulton Railroad Company, and that the consolidated company possessed all the franchise, rights, privileges, and immunities contained in the charter of the Cairo and Fulton Railroad Company. It was agreed between the parties to that suit that the consolidation was effected under the laws of the State of Arkansas, and "that the consolidated company is and has been the owner of and entitled to all the franchises and privileges and immunities of the Cairo and Fulton Railroad Company at the time of said consolidation." A certified abstract from the bill of exceptions in that case is filed herein, showing the above agreement.

The question before the court in the case above cited was whether an employé of the plaintiff company in this case was subject to work on the public roads of the State. It was claimed and shown that the employés of this plaintiff were exempt from working on the public roads in this State, by the charter of the Mississippi Valley Railroad Company granted by this State, which charter was referred to in the Cairo and Fulton railroad charter, and incorporated into that charter.

137 The supreme court in that case decided that the St. Louis,

Iron Mountain and Southern Railway Company owned and possessed all the rights, franchises, and privileges contained in the Cairo and Fulton railroad charter, and that the appellant was not required to work on the public roads in this State.

If the question before the court was exactly similar to the question before the supreme court in the case above cited, the decision of that court would be conclusive. But the questions are different, and require a different construction of the charter and the privileges claimed under it. The one case was where the privilege claimed was one of necessity for the successful operation of the business of the railroad company, the other, the case now before the court, is the claim of a privilege or immunity which is personal in its nature.

The court in that says: "The exemption claimed by the defendant is not a mere personal privilege, but it is a valuable right of the company;" again, "the St. Louis, Iron Mountain and Southern Railway Company, therefore, has the same immunity for its officers, agents, and servants * * * from working on the public roads that the Cairo and Fulton Company had at the time of consolidation."

The case before the court presents the question of the exercise of a personal privilege by the plaintiff, which was granted to the Cairo and Fulton Railroad Company. In examining this question, which is of the highest importance to the State, involving the sovereign right of taxation, the power given to the Cairo and Fulton
138 Company to consolidate, if given at all, must necessarily be considered.

The tenth section of the charter, under which it is claimed this consolidation was effected, grants the power to the Cairo and Fulton Company "to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States." This power so granted did not authorize a consolidation of the two roads, and the forming of a new and distinct corporation, made up by the union of the Cairo and Fulton Company with the Missouri Company, and taking a new name, and having a distinct and new organization. The Cairo and Fulton Company was a creature of the State, under the control of the State laws, operating upon its officers. The consolidated company, the plaintiff here, is a distinct and new organization, with its principal office and officers in St. Louis, in the State of Missouri, and not within the jurisdiction of the State. The uniting of the two roads at the State line might well have been accomplished, and the two roads operated as public highways for freight and passengers, and the Cairo and Fulton Company retaining its organization. This is what was contemplated by the tenth section of the charter, in view of the exemption from taxation contained in the eleventh section of the charter, that the State through its proper officers might require an account to be given, from time to time, of the operations of the road, in order to ascertain if the road at any time had paid interest at ten per cent. per annum. The consolidation with the Missouri
139 Company into a new and distinct corporation, having a line of road from St. Louis, Mo., to the Texas line, through the State of Arkansas, under one management, one set of officers, and

having one account of its operations, and its principal office and accounting offices out of the jurisdiction of the State, it follows that the State has lost its control and power over the corporation to which it granted a charter, with exemption from taxation until the happening of a certain contingency, which necessarily implied an accounting between the company and the State.

The action of the Cairo and Fulton Company in entering into this consolidation has had the effect of so intermingling and confusing its operations and the accounts of receipts and expenditures that it would be exceedingly difficult to ascertain or arrive at a correct statement of them. This consolidation brings this case within the rule laid down in "Railroad Company *v.* Maine, 96 U. S., 499," upon principle. In that case the Supreme Court decided that the exemption from taxation granted to the two companies that consolidated with a third company did not inure to the consolidated company, on account of the intermingling and confusion of the operations of the two roads and their accounts, so as to render it "impossible to show what would have been the profits of each road; only an approximation to them would have been attainable." The action of the Cairo and Fulton Company in this consolidation was voluntary, and the consolidation effected was entirely outside of the power given by the tenth section of the charter. The power given in this section "to make any contract or agreement with any
140 other railroad company in reference to their business, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs," was given only for the purpose of facilitating the early construction of the road. This is manifest from the language of the section. The Cairo and Fulton road was completed before the consolidation. The conclusion is, in view of the taxing power, that the consolidation of the Cairo and Fulton Company with the Missouri Company, as shown by the articles and agreement between the two companies for a consolidation, was not entered into and effected by virtue of the power given to the first-named company in the tenth section of its charter. The organization of the new company, under this agreement to consolidate, is a voluntary organization; but, if organized under the general law of 1868, for the organization of railroad companies, the company is subject to the provision of the constitution of 1868, and its property is not exempt from taxation.

Again: The agreement entered into between the two above-named companies, under which they were consolidated and formed, the plaintiff company, by its language shows that all the property of the Cairo and Fulton Railroad Company, "real, personal, and mixed," shall be taken and deemed to be transferred to and vested in the St. Louis, Iron Mountain and Southern Railway Company, as such new corporation, without such further act or deed, and all property, all rights of way, and all and every other interest shall be as
141 effectually the property of this new corporation, without further conveyance or assurance, as they were of the former corporations, parties hereto." This places the property of the Cairo and

Fulton Company now in the ownership and possession of the plaintiff by transfer absolutely, within the rule announced by the Supreme Court of the United States in Morgan *v.* Louisiana, 93 U. S. The property exempted from taxation by the charter of one railroad company is not exempt when owned by another by purchase. This exemption is a privilege not capable of transfer.

The conclusions I have arrived at are drawn from the intention of the Legislature granting the charter to the Cairo and Fulton Company, that intention being clearly shown by the language used in the tenth section; from the able arguments of counsel on both sides of this case, to which I gave careful attention; and from the authorities cited by them, and from the effect of the agreement of consolidation referred to, on the exemption from taxation under the charter.

Another issue raised by the answer is that the road has paid interest at the rate of ten per cent. per annum. The fund upon which the interest was to be paid is not expressly stated in the charter, but by proper construction it must be intended to refer to the capital stock of the company. It was admitted in argument that the capital stock, mentioned in the charter, was the cost of construction and equipment of the road ready for operation.

There is evidence to show that the cost of construction and
142 equipment of the Cairo and Fulton railroad was $7,712,500.

There is further evidence to show that in 1882 that part of the plaintiff's road in the State of Arkansas, and formerly the Cairo and Fulton road, yielded, by its operations, a net income, after paying all expenses, of $1,312,612.26. It seems from this that the road has paid ten per cent. per annum on its capital stock, the cost of construction and equipment.

The injunction must be refused, and the bill dismissed for want of equity, at cost of plaintiff.

D. W. CARROLL, *Chancellor.*

Filed Nov. 7, 1883.

J. W. CALLOWAY, *Clerk.*

143 STATE OF ARKANSAS, *County of Pulaski:*

I, J. W. Calloway, clerk of the Pulaski chancery court, hereby certify that the annexed and foregoing 181 pages contain a true, correct, and complete transcript of the record and proceedings of said court made and had in the foregoing-entitled cause, on the days and dates therein mentioned, as the same appears of record and on file in my office.

In testimony whereof, I have hereunto set my hand as such clerk and affixed the seal of the said Pulaski chancery court, at office in Little Rock, Arkansas, this 19th day of November, A. D. 1883.

[L. S.] J. W. CALLOWAY, *Clerk,*
By S. R. BROWN, *D. C.*

144 *Advancing the Cause.*

Proceedings in the Supreme Court.

DECEMBER 8TH, A. D. 1883.

Come the appellant, by solicitors Dodge & Johnson and J. M. Moore, and the appellees, by the attorney general, and U. M. & G. B. Rose, Esqr.; and, on motion and by consent of both parties, by solicitors, this cause is advanced and docketed for the present November term, as one involving the public revenues, to be called for submission or oral argument not later than the 18th inst.

Motion, &c., to Continue Restraining Order.

DECEMBER 15, A. D. 1883.

Comes the appellant, by Dodge & Johnson and J. M. Moore, its solicitors, and present to the court a motion for an order continuing the restraining order granted by the chancellor, until the final disposition of this cause, upon which motion appears, in writing, the consent of the appellees to the continuance of said order to and until Feb'y 1, 1884, and the waiver of an injunction bond, signed by the attorney general, C. B. Moore, and U. M. & G. B. Rose, solicitors for appellees; and the court being sufficiently advised, and said appellees also assenting in open court, through their solicitors, that said restraining order be continued until Feb'y 1st, 1884—

145 It is ordered that said restraining order granted by his honor D. W. Carroll, chancellor, be, and the same is hereby, extended and continued in full force until Feb. 1, 1884, without bond by appellants.

Prayer & Consent for Continuation of Restraining Order.

The appellant prays an order continuing the restraining order granted by the court below until the final disposition of said cause.

DODGE, JOHNSON & J. M. MOORE.

We hereby consent to the continuance of the restraining order as prayed, until Feb'y 1, 1883, and waive an injunction bond.

C. B. MOORE, *Att'y Gen'l.*
U. M. & G. B. ROSE.

Submission.

JANUARY 5, 1884.

Come the appellant and appellees, by solicitors, and this cause is submitted upon the briefs filed and by the court taken under advisement.

Final Decree of Sup. C't.

FEBRUARY 2D, A. D. 1884.

This cause came on to be heard upon the transcript of the record of the Pulaski chancery court, and was argued by solicitors; on con-

sideration whereof, it is the opinion of the court that there is
146 no error in the proceedings and decree of said Pulaski chancery court in this cause.

It is therefore ordered and decreed by the court that the decree of said Pulaski chancery court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further ordered and decreed that said appellees recover of said appellant all their costs in this court in this cause expended, and have execution thereof as upon judgments at law.

147 *Opinion Supreme Court Arkansas.*

This suit was brought for the purpose of enjoining the Board of Railroad Commissioners from assessing for taxation the plaintiff's road, rolling-stock, fixtures, and appurtenances. The claim of exemption is based upon the charter of the Cairo and Fulton Railroad Company, granted January 12th, 1853.

The provisions of the charter, so far as they effect the present case, are as follows:

"SECTION 10. Said corporation shall have power to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States, and its southern end with any road coming in from Texas, at such point on the boundary-line which divides that State and Arkansas that may be deemed most eligible, and to make any contract or agreement with any other railroad company in reference to their business that may
best insure the early construction of said road and its success-
148 ful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs, if it should be proved necessary to facilitate the early construction of their said road; the contract or agreement of the respective boards shall form a part of their respective charters whenever the same may be entered into, and recorded with their charters." Acts 1852, p. 180.

SECTION 11. "That the capital stock and dividends of said company shall be forever exempt from taxation; the road, fixtures, and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum."

SECTION 13. "This act shall be deemed a public act, and shall be favorably construed for all the purposes therein expressed and declared in all courts and places whatsoever, and shall be in force from and after its passage: Provided, That all the rights, privileges, immunities, and franchises contained in the charter granted at this session of the Legislature of this State to 'The Mississippi Valley Railroad Company,' and not restricting or inconsistent with this act, are hereby extended to, and shall form a part of, this incorporation, as fully as if the same were inserted herein."

Section 25 of the "Mississippi Valley Railroad Company" reads as follows:

149 "The capital stock of said company, with all the immunities

and franchises herein specified, and all machines, cars, engines, or carriages belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares. And the capital stock of said company and the dividends shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock; and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures which will reduce the dividends below ten per cent. per annum. Said stockholders shall not be bound or liable for any greater amount than the respective shares of stock which they or either of them own."

The complainant states that plaintiff's road was completed on the fifth day of December, 1873. Also that under the "tenth section of its charter it consolidated with the St. Louis and Iron Mountain Railroad Company, a corporation organized and created
150 under the laws of Missouri, whose road connected with the said Cairo and Fulton railroad at the line between said States, and assumed the corporate name of the St. Louis, Iron Mountain and Southern Railway Company, and on 2d day of June, 1874, filed articles of consolidation in the office of the secretary of State, and that its road had never paid an interest of ten per cent. per annum, and had never made nor declared any dividend on its capital stock. Nevertheless the Legislature of this State had, by a statute approved March 31, 1883, entitled "An act to revise and amend the revenue laws of Arkansas," required the plaintiff to return a sworn schedule of its property with a view to taxation, and the defendants, a board of railroad commissioners, were proceeding to assess said road, fixtures, and appurtenances.

The answer is as follows:

"I. That the consolidation mentioned in the complaint was effected after the completion of said Cairo and Fulton railroad, and was had in virtue of the forty-third section of an act of the General Assembly of the State of Arkansas entitled 'An act to provide for a general system of railroad incorporation,'" approved July 23, 1868.

"II. Said capital stock of Cairo and Fulton Railroad Company has paid an interest of ten per cent. per annum, and said road has paid a like interest."

151 The law referred to in *in* the first paragraph of the answer reads as follows:

"SEC. 43. Any railroad company now chartered under existing laws, or which may hereafter become incorporated under this law, shall have power and authority to purchase and hold any connecting railroad, and operate the same, or to consolidate their companies and make one company under the name of one or both, or any *or any* other name; but when such purchase is made or consolidation is effected, the said company shall have and be entitled to all the benefits, rights, franchises, lands, and tenements, and property of

every description belonging to said road or roads so sold or consolidated, and shall be liable to all the pains and penalties imposed by their respective charters."

Depositions were taken as to the cost and income of the road, and upon final hearing the chancellor dismissed the bill.

The plaintiff can derive no benefit in this suit from the reference in its charter to the charter of the Mississippi Valley Company. By the 13th section, above quoted, "all the rights, privileges, immunities, and franchises contained in the charter of the Mississippi Valley railroad, and not restricting or inconsistent with this act,"
152 are extended to the Cairo and Fulton Company as fully as if the same had been inserted in the act of incorporation. By a comparison of the exemption clauses in the two charters, it will be seen that the provisions as to exemption from taxation are fundamentally different. They are, therefore, inconsistent, and the special provisions on this subject in the charter of the Cairo and Fulton Company are not enlarged by the reference clause.

The constitution of 1836, in force when the charter was granted, contained no restraint on the action of the Legislature in granting immunity from taxation. Hence, the General Assembly had the power to bind the State in relinquishing its power to tax this corporation.

But every such immunity must receive a strict construction.

"It is manifest that legislation which it is claimed relieves any species of property from its due proportion of the general burdens of government should be so clear that there can be neither reasonable doubt nor controversy about its terms. * * * If, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved
153 in favor of the State. In other words, the language must be of such a character as, fairly interpreted, leaves no room for controversy." Bailey *v.* McGuire, 22 Wall., 226.

"It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be imputed to it unless the language employed leave no other alternative." Ib.

But it is argued that this rule is suspended by the thirteenth section of the charter, which provides that it shall be literally construed "for the objects therein set forth." The rule of strict construction universally applied to exemptions from taxation demands that this provision shall be limited in its operation to the powers granted to the corporation. It cannot be supposed that the Legislature intended any laxity of construction in a matter so vital to the public interest as that of taxation.

But by its charter a limited and conditional exemption from taxation was granted to the Cairo and Fulton Company. It only remains to consider whether the plaintiff is the same corporation to which the grant was made or has succeeded to its rights in this respect.

Obviously the plaintiff is not the old Cairo and Fulton Company, nor does it claim to be. The complaint shows a consolida-
154 tion with a Missouri corporation. And in the absence of a

contrary intention clearly expressed in the law authorizing it, the legal effect of a consolidation is to extinguish the constituent companies and to create a new corporation, with property, liabilities, and stockholders derived from those then passing out of existence. McMahon *v.* Morrison, 16 Ind., 172; Lauman *v.* Lebanon R. Co., 30 Pa. St., 42; Clearwater *v.* Meredith, 1 Wall., 25; State *v.* Sherman, 22 O. St., 411; Shields *v.* State, 26 Id., 86; Same case on error, 95 U. S., 319; Central R. Co. *v.* Georgia, 92 Id., 665; Railroad Co. *v.* Maine, 96 Id., 499; Railroad Co. *v.* Georgia, 98 Id., 359.

But the claim is that the Cairo and Fulton Company, pursuant to authority contained in its charter, united itself with the St. Louis and Iron Mountain Company, and that the resultant company—the present plaintiff—is entitled to all the rights, privileges, and immunities of the original companies, including the exemption from taxation granted by the Cairo and Fulton charter. This consolidation was effected on the 30th of April, 1874, and after the completion of the road which the old company was incorporated to build. Upon
a fair construction of this charter the power to consolidate
155 with any other railroad company in or out of the State was given. But unless we are to pay no attention to the clause, "if it should be found necessary to facilitate the early construction of their said road," the exercise of this power must be limited to the period during which the road was in process of construction. Hence the Cairo and Fulton Company had not power, by virtue of its charter, to consolidate with the St. Louis and Iron Mountain Company on the 30th of April, 1874. We attach no importance to the extra-judicial remarks of the judge who delivered the opinion in Zimmer *v.* State, 30 Ark., 677, to the effect that this consolidation was effected by virtue of a charter provision, and that the St. Louis, Iron Mountain and Southern Company had succeeded to all the rights, privileges, franchises, and immunities of the Cairo and Fulton Company. It did not appear in that case that the consolidation took place after completion of the road. The right to consolidate and the effect of consolidation upon the chartered rights of the company were expressly withdrawn from the consideration of the court by agreement of counsel.

That case arose in this way: Zimmer, an employee of the St.
Louis, Iron Mountain and Southern railroad, was indicted for
156 failure to work on the public road. Now, the charter of the Mississippi Valley Railroad Company exempted its servants from road duty. And the only question which could have been properly decided on that record was whether the reference clause in the charter of the Cairo and Fulton Company was operative to confer a like exemption upon the servants of the last-named company. For the bill of exceptions in that case shows that it was expressly admitted that, if the Cairo and Fulton Company had ever enjoyed this exemption, then, by virtue of the consolidation, it had passed to the St. Louis, Iron Mountain and Southern Company.

But if we are in error in our position that the charter did not authorize consolidation after the road was finished, it is to be observed that the charter is silent about the effect of consolidation upon the

corporate rights, powers, privileges, and immunities granted by it. It does not declare that the new corporation shall be entitled to all the benefits, rights, and franchises of the old corporations. Now, it is an unbending rule of construction that an exemption from taxation is *strictissimi juris*. As it is never created in the first instance by implication, so it is never extended by construction.
157 A claim of this sort cannot be supported, unless the statute alleged to confer it is so plain as to leave no room for controversy. "In the construction of a charter, to be in doubt is to be resolved, and every resolution which springs from doubt is against the corporation." Charles River Bridge *v.* Warren Bridge, 11 Peters, 543; Central R. Co. *v.* Georgia, 92 U. S., 674; Penn. R. Co. *v.* Canal Com'rs, 21 Pa. St., 9, per Black, C. J.

We do not mean to say that the consolidation of these two companies was at the time it took place unlawful. The act of July 23, 1868, providing for a general system of railroad incorporations was then in force; and its forty-third section (Sec. 4969 of Gantt's Digest) authorized consolidation, and declared that the company springing from such union should succeed to all the benefits, rights, franchises, lands, and property of every description belonging to the roads so consolidated. But before the passage of that act the constitution of 1868 had taken effect, and it contained the following provisions:

"The General Assembly shall pass no act conferring corporate powers. Corporations may be formed under general laws, but all such laws may from time to time be altered or repealed." Article 5, section 8.
158 "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." Article 1, section 18.

"The property of corporations now existing or hereafter created shall forever be subject to taxation the same as property of individuals." Article 5, section 48.

Now, if the act of 1868 was the sole authority for the consolidation at the time that it actually took place, there can be no doubt that the plaintiff in this suit took the Cairo and Fulton charter, subject to the constitutional provisions then in force. In that view the present case is not distinguishable from Shields *v.* Ohio, 95 U. S., 319; Railroad Co. *v.* Georgia, 98 U. S., 359; and L. & N. R. Co. *v.* Palmer, 3 Supreme Court Reporter, 193. In the last of these cases it was said: "That in cases of corporations created by consolidation, the powers of the new company did not pass to it by transmission from its constituents, but resulted from a new legislative grant that could not transcend the constitutional authority existing at
159 the time it took effect. * * * The exemption was not impressed upon the property itself into whosesoever hands it might afterwards come, following the title like an easement or covenant running with the land. * * *

The grant is to a person in respect of a thing. * * * There must always be a person capable not only of receiving the title, but also of accepting the conditions accompanying it, and which con-

stitutes the exemption; otherwise the conditions become impossible and void.

After the adoption of the constitution of 1868, there could be no corporation created capable in law of accepting and enjoying such an exemption."

There is another consideration which leads to the same result. The exemption of the Cairo and Fulton Company was not absolute and perpetual, but conditional and qualified. No tax was to be levied until ten per cent. per annum on the amount expended in building and equipping it was realized. St. Louis, &c., R'y *v.* Loftin, 30 Ark., 718.

This provision undoubtedly implied an accounting between the company and the State. It imposed upon the company the
160 duty of keeping accounts of the cost of construction and equipment of its road, and of its receipts and expenditures. Else how could it be ascertained whether the contingency had arisen upon which the road was to become taxable?

But the new company was subject to no such duty. This brings the case within the operation of the principle laid down in Railroad Company *v.* Maine, 96 U. S., 499, where it was said:

"The assets of all the companies were intermingled, and continuous trains were running over the whole length of the several roads. It would have been impossible to show what would have been the profits of each road without the consolidation. Only an approximation to them would have been attainable, and that would have been based upon estimates more or less speculative in their character.

"The consolidation of the original companies was a voluntary proceeding on their part. The law made it dependent upon their agreement. Having thus disabled themselves from a compliance with the conditions upon the performance of which the amount to be paid as a tax to the State could be ascertained, they must
161 be considered as having waived the exemption dependent upon such performance. Their exemption was qualified by their duties, and dependent upon them. They incapacitated themselves from the performance of those duties by a proceeding which they supposed would give them greater advantages than their exemption. The new company was not charged with the duties which they were to perform to the State, and by which the State was to be governed in its taxation, nor was the State under any obligation to accept a substitute performance from other parties."

The chancellor, as it appears from his written opinion, found that that part of the plaintiff's road in this State, and formerly known as the Cairo and Fulton road, had yielded by its operations a net income of ten per cent. per annum on the cost of construction and equipment. What we have already said renders it unnecessary to go into this question. In the very nature of things, it is impossible to do more than guess at it. It appears by the plaintiff's own proofs that the officers cannot tell, save by an approximation, what the actual earnings of this part of the road are.

The decree is affirmed.

162 STATE OF ARKANSAS:

In the Supreme Court.

I, Luke E. Barber, clerk of the supreme court of the State of Arkansas, hereby certify that the foregoing 154 pages contain a full, true, and correct transcript of the record of the supreme court of the State of Arkansas in the case stated (except briefs of counsel).

In testimony whereof, I hereto set my hand as clerk and affix the seal of said supreme court, this 10th day of June, A. D. 1884.

[SEAL.] L. E. BARBER, *Clerk.*

Fees, transcript, $60.00, paid by plaintiff in error	60 00
Clerk sup. court costs in case	12 00
	872 00

Endorsed on cover: Arkansas supreme court. No. 907. The St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, *vs.* James H. Berry *et al.*, as the Board of Railroad Commissioners of the State of Arkansas. Filed 30th August, 1884.

113-465

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 907.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

vs.

JAMES H. BERRY, JACOB FROLICK, AND A. W. FILES, AS THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF ARKANSAS, AND JACOB FROLICK, AS SECRETARY OF STATE,

Defendants in Error.

Brief for Plaintiff in Error.

J. H. McGOWAN,
A. T. BRITTON,
A. B. BROWNE,
Att'ys for Plaintiff in Error.

JOHN F. DILLON,
of Counsel.

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1884.

In the Supreme Court of the United States.

October Term, 1884.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.
PLAINTIFF IN ERROR,
vs.
JAMES H. BERRY ET AL., AS THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF ARKANSAS.

No. 907.

STATEMENT.

This suit was brought in the Chancery Court of the County of Pulaski, Arkansas, to restrain the Railroad Commissioners of the State from proceeding to levy a tax on the *corpus* of the railroad of the complainant company, on the ground that such tax would be a violation of the charter-contract.

The complainant, in its bill, alleges its incorporation under an act of the General Assembly of that State, entitled "An act to incorporate the Cairo and Fulton Railroad Com-"pany," approved Jan'y 12, 1853; that, under the provisions of its charter, it consolidated with a Missouri railroad corporation, and assumed the name of the St. Louis, Iron Mountain and Southern Railway Company; that, by the eleventh section of the charter-act, its capital stock and dividends are declared forever exempt from taxation, and its road, fix-

tures, and appurtenances, until after it shall pay an interest of not less than ten per cent. per annum; that the thirteenth section of the charter provides that it shall possess and enjoy all the rights, privileges, immunities, and franchises contained in the charter granted the Mississippi Valley Railroad Company, not restrictive or inconsistent with the provisions of its own charter, and that section twenty-five of the act incorporating said Mississippi Valley Co. provides that the capital stock and dividends of said company shall be exempt from taxation until a dividend of six per cent. is realized upon the capital stock, and the road, with all its fixtures, &c., shall be exempt for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures which will reduce the dividends below ten per cent. per annum; that it is provided in both acts that they shall be favorably construed in furtherance of the purpose and objects therein expressed; that its road was completed December 5, 1873, and that it does not now and never has paid an interest of ten per cent., nor any dividend realized or declared on its capital stock.

The bill further sets forth that the Board of Railroad Commissioners for the State, under an act of the Assembly approved March 31, 1883, have required of the complainant a statement of the length of its track, and other facts relating to its property, for the purpose of having the same assessed for taxation under said act; that complainant furnished such statement to said Board, accompanied with a statement setting forth its exemptions from taxation, and protesting against the assessment of its property; that notwithstanding all this, the said Board was proceeding to have the assessment made. The bill, therefore, prays that they may be enjoined.

Rec., 4 and 5.

To this bill of complaint the defendants filed the following answer, which we give in full:

"Come said defendants, and for answer say: 1. That the "consolidation mentioned in the complaint was effected "after the completion of said Cairo and Fulton Railroad, "and was had in virtue of the 43d section of an act of the "General Assembly of the State of Arkansas, entitled "'An act to provide for a general system of railroad in-"'corporation,' approved July 23, 1868. 2. Said capital "stock of said Cairo and Fulton Railroad Company has "paid an interest of ten per cent. per annum, and said road "has paid a like interest."

Rec., 40.

The case was submitted on the depositions of three witnesses and an agreed statement of facts, and the Court entered a decree dismissing the bill.

Rec., 69.

An appeal was taken to the Supreme Court of the State, where the decree below was affirmed, (Rec., 74,) and from this latter decree the case was brought here on error.

THE FACTS OF THE CASE.

The Cairo and Fulton Railroad Company was incorporated by the following special act, which we deem best to give entire:

An Act to incorporate the Cairo and Fulton Railroad Company.

SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, as follows: Edward Cross, Henry K. Hardy, John R. Hampton, H. P. Poindexter, William E. Davidson, W. C. Bevens, B. C. Totten, John N. Mitchell, A. S. Huey, J. M. Curran, W. E. Ashley, D. J. Chapman, and Thomas J. Blackmore, and all such persons as shall

hereafter become stockholders in the Company hereby incorporated, shall be a body politic and corporate by the name and style of the "Cairo and Fulton Railroad Company," and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and in equity, in all courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter or renew the same at pleasure; and by their corporate name and style shall be capable in law of contracting and being contracted with, shall be and are hereby invested with all the powers and privileges, immunities and franchises, and of acquiring by purchase, donation, or otherwise, and of holding and conveying real and personal estate, which may be useful to carry into effect fully the purposes and objects of this act.

SEC. 2. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain and operate a railroad from a point on the Mississippi river opposite the mouth of the Ohio, in the State of Missouri, by way of Little Rock, to the Texas boundary line, near Fulton, in Arkansas, with one or more branches to the western boundary line of this State, with the view of entering the northeastern and the northwestern portions of Texas, and there connecting with projected railroads in that State, from the bay of Galveston, running up the valleys of the Brazos and Trinity rivers; said company may also branch and extend their said road to any other point or points within this State: *Provided*, The same shall not conflict with the franchises of any other railroad company: *And provided further*, That said company shall obtain the right of way through the State of Texas, on such route as shall be deemed most expedient, with as many lines of rails or tracks as they shall choose to make.

SEC. 3. The said corporation shall have right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding one hundred feet in width on each side of and through its entire length; may enter upon and take possession of and use all and singular any lands, streams and materials of any

kind for the location of depots and stopping stages, for the purpose of constructing bridges, dams, embankments, excavations, spoil-banks, turnouts, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving in complete operation of said road; all such lands, waters, materials, and privileges belonging to this State are hereby granted to said corporation for said purposes; but when owned or belonging to any person, company, or corporation, and cannot be obtained by voluntary grant or release, the same may be taken and paid for, if any damages are awarded in the manner provided for by law; *Provided*, Nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams.

SEC. 4. The capital stock of said corporation shall be one million five hundred thousand dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road, divided into shares of twenty-five dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the Board of Directors, who shall have power to require the payment of sums subscribed by stockholders in such manner and on such terms as they may deem proper, and on refusal or neglect on the part of the stockholders, or any of them, to make payment on the requisition of the Board of Directors, the shares of such delinquents may be sold or forfeited to the company, upon such terms and conditions as may be provided for in the by-laws of said corporation. The Board of Directors hereby appointed shall cause books to be opened for subscriptions to said stock, in such manner and at such times and places as they may direct.

SEC. 5. All the corporate powers of said Company shall be vested in, and be exercised by, a Board of Directors, and such officers and agents as they shall appoint. The Board of Directors shall consist of not less than thirteen stockholders, four of whom shall be chosen every year by the stockholders; each share having one vote, to be given in person or by proxy, each Director successively elected to continue in office until his successor is elected and qualified. Vacan-

cies in the Board may be filled by a vote of two-thirds of the Directors remaining, such appointees to continue in office until the next regular election of Directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the Directors at least one week before the time appointed for such election. Other officers, agents, and servants, whether members of the Board or otherwise, may be appointed, employed, paid and dismissed, under such rules and regulations as the Board of Directors may from time to time adopt.

SEC. 6. The following-named persons shall constitute the first Board of Directors, to wit: Henry K. Hardy, John R. Hampton, Edward Cross, H. P. Poindexter, William E. Davidson, W. C. Bevens, B. C. Totten, John N. Mitchell, A. S. Huey, J. M. Curran, W. E. Ashley, D. J. Chapman, and Thomas J. Blackmore, for the time being, whose powers shall commence from and after the day this act shall be by them accepted, which shall not exceed ninety days from the passage of this act, and shall be addressed to the Governor of the State of Arkansas, and filed in the office of the Secretary of State.

SEC. 7. The President and Directors for the time being are hereby authorized and empowered, by themselves, their officers or agents, to exercise all the powers herein granted for the purpose of surveying, locating, constructing, completing, altering, maintaining, preserving and operating said road, and for the transportation upon the same of persons, goods, wares and merchandise, with all such powers and authority of control and management of the affairs of said company as may be necessary and proper to carry into full and complete effect the meaning and intent of this act.

SEC. 8. The said Company shall have power to make, ordain, and establish all such by-laws, rules, and regulations as may be deemed expedient and necessary to fulfil the purposes and carry into effect the provisions of this act, and for the well ordering, regulating, and securing the affairs, business, and interests of the Company: *Provided*, That the same be not repugnant to the Constitution and laws of the United States, of this State, or repugnant to this act. The Board of Directors shall have power to establish such rates of toll

for the conveyance of persons and property upon the same, as they shall from time to time by their by-laws direct and determine, and levy and collect the same for the use of said Company; the transportation of persons and property, the width of track, the construction of cars, locomotives, and all other equipments and appurtenances of the road, and all matters and things respecting the use of said road, and the conveyance of passengers and property, shall be in conformity to such rules and regulations as said Board of Directors shall, from time to time, determine.

SEC. 9. The said corporation may commence the construction of said road at any time after one hundred thousand dollars of capital stock shall have been subscribed, and five per cent. thereon paid to the Board of Directors.

SEC. 10. Said corporation shall have power to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States, and its southern end with any road coming in from Texas, at such point on the boundary line which divides that State and Arkansas that may be deemed most eligible, and to make any contract or agreement with any other railroad company in reference to this business that may best insure the early construction of said road and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one Board of Directors for the management of their affairs. If it should be found necessary to facilitate the early construction of their said road, the contract or agreement of the respective boards shall form a part of their respective charters whenever the same may be entered into and recorded with their charters.

SEC. 11. That the capital stock and dividends of said Company shall be (forever) exempt from taxation; the road, fixtures, and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum.

SEC. 12. In case the persons incorporated by this act should fail or neglect to accept the provisions of the same, and comply with its conditions within the time and in the manner herein prescribed, then the same may be accepted

by any other company, which shall be approved by the Governor of this State, who, upon complying with the terms and conditions in this act, shall be vested with all the rights, powers, and immunities conferred upon the corporation herein named, and shall be subject to all the liabilities in said act, set forth in as full, ample, and complete a manner as if their names were inserted as corporators in this act.

SEC. 13. This act shall be deemed a public act, and shall be favorably construed for all the purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage: *Provided*, That all the rights, privileges, immunities, and franchises contained in the charter granted at this session of the Legislature of this State to "The Mississippi Valley Railroad Company," and not restricting or inconsistent with this act, are hereby extended to, and shall form a part of this incorporation as fully as if the same was inserted herein.

Approved 12th January, 1853.

We give in this connection such portions of the charter of the Mississippi Valley Co., referred to in section 13 of the above act, as we deem necessary to the discussion.

The act, entitled "An act to incorporate the Mississippi "Valley Railroad Company," provides:

* * * * * * * * *

"SEC. 2. That said corporation is authorized to make any "lawful contract with any other railroad company in relation "to the business of said Company; also to make joint stock "with any other railroad corporation in this or any adjoin- "ing States, and said Company shall have full power to "unite and connect their railroad with the ends of the New "Orleans and St. Louis roads at such points as may be fixed "on the northern and southern boundary lines of this State, "and to form one Board of Directors for the running man- "agement of said railroad in the States through which the "same shall pass; the agreement of the Board of Directors "of Louisiana, Arkansas, and Missouri shall form a part of "their respective charters whenever the same may be en-

" tered into and recorded with their charters. The said " corporation shall have full power to make such contracts " or arrangements as they may deem proper with the said " Louisiana and Missouri Board of Directors for uniting of " their respective roads, and for any other purpose that may " be by them deemed necessary to facilitate and carry out " the objects and purposes of this charter, with all such " necessary power as shall best enable said Company to " carry into effect and fully to ensure the complete and " harmonious operation of the respective roads, that they " may form one continuous line of railroads between the " said cities of New Orleans and St. Louis. Said corpora- " tion shall also have authority to make such contracts and " agreements as they may deem expedient for the connec- " tion of any branch roads with theirs that they may deem " advantageous to the business and revenue of the railroad " and this Company."

* * * * * * * * *

" Sec. 18. That full right and privilege is hereby served " to citizens of this State and the States of Louisiana " and Missouri, or any Company hereafter incorporated un- " der the authority of either of said States to connect with the " said railroad hereby provided for: *Provided*, Said connec- " tion shall be formed with said road on terms usual in such " cases, and that in forming such connection no injury shall " be done to the works of the Company hereby incorpo- " rated."

* * * * * * * * *

" Sec. 25. The capital stock of said Company, with all " the immunities and franchises herein specified, and all " machines, cars, engines, or carriages belonging to said " Company, together with all their works and property, and " all profits which shall arise from the same, shall be vested " in the respective stockholders of the Company forever, in " proportion to their respective shares. And the capital " stock of said Company, and the dividends, shall be ex- " empted from taxation until a dividend of six per cent. " is realized upon the capital stock, and the road with all " its fixtures and appurtenances, including workshops, ware- " houses, and vehicles of transportation, shall be exempted

" from taxation for the period of twenty-five years from " the completion of the road, and no tax shall ever be levied " on said road or its fixtures which shall reduce the divi- " dends below ten per cent. per annum. Said stockholders " shall not be bound or liable for any greater amount than " the respective shares of stock which they or either of them " own."

" Sec. 26. The President and Directors, clerks, agents, " officers, and servants of said Company shall be exempt " from military duty and serving on juries and working on " public roads."

* * * * * * * * *

Approved January 12, 1853.

The Company, thus brought into existence, proceeded with the construction of its road, completing its main line by the 1st day of Jan'y, 1874. The branches, however, which were provided for by the charter, were not constructed until after the consolidation hereafter mentioned; the branch from Newport to Batesville being completed but a brief time previous to the commencement of this suit.

Rec., 62.

On the 30th day of April, 1874, the said Cairo and Fulton Railroad Company entered into an agreement to consolidate with the St. Louis and Iron Mountain Railroad Company, a Missouri corporation, under the name of the St. Louis, Iron Mountain and Southern Railroad Company.

Record, 56.

On the 4th day of May following, the Board of Directors of the said Cairo and Fulton Railroad Company passed the following resolution, which was subsequently ratified by the stockholders, (Record, 57:)

" *Resolved*, That this Company will enter into an agree- " ment with the St. Louis and Iron Mountain Railroad Com-

" pany for uniting and consolidating this Company with the " said St. Louis and Iron Mountain Railroad Company, and " *for making joint stock of the two Companies, and forming* " *one Board of Directors for the management of the affairs* " *of said Companies*, on the basis jointly recommended by " the committees on consolidation, and embracing in the " agreement executed by the said St. Louis and Iron Moun- " tain Company, and now here submitted for execution on " the part of this Company."

The other resolutions of the Directors of the respective Companies, the approval of the stockholders of each Company, and the agreement for consolidation finally entered into, will be found in the Record, at pages 57 to 62, inclusive.

The General Assembly of the State of Arkansas passed an act, approved July 23, 1868, entitled " An act to provide " for a general system of railroad incorporation." Section 43 reads as follows:

" SEC. 43. Any railroad company now chartered under ex- " isting laws, or which may hereafter become incorporated " under this law, shall have power and authority to purchase " and hold any connecting railroad and operate the same, or " to consolidate their companies and make one company, un- " der the name of one or both or any other name; but when " such purchase is made or consolidation is effected the said " company shall have and be entitled to all the benefits, " rights, franchises, lands and tenements, and property of " every description belonging to said road or roads so sold " or consolidated, and shall be liable to all the pains and " penalties imposed by their respective charters."

Before the passage of the act last above referred to the constitution of 1868 had gone into effect. It contained the following provisions:

"The General Assembly shall pass no act conferring cor-
" porate powers. Corporations may be formed under gen-
" eral laws, but all such laws may from time to time be
" altered or repealed." (Article 5, section 8.)

"The General Assembly shall not grant to any citizen or
" class of citizens privileges or immunities which upon the
" same terms shall not equally belong to all citizens."
(Article 1, section 18.)

"The property of corporations now existing or hereafter
" created shall forever be subject to taxation the same as
" property of individuals." (Article 5, section 48.)

ASSIGNMENT OF ERRORS.

1. The Court below held that the consolidation was not made in pursuance of the charter-act of 1853, but was made under the provisions of section 43, of the act of July 23, 1868; that the Company resulting from such consolidation was a new creation within the inhibitions of the Constitution of 1868, and hence not exempt from taxation. In this the Court erred.

2. The Court also found that that part of complainant's road within the State of Arkansas had yielded a net income of ten per cent. per annum on the cost of construction and equipment, and hence was subject to taxation. In this also the Court erred.

ARGUMENT.

The Cairo and Fulton Company was authorized by the 10th section of its charter to make joint stock with any railroad company outside the State, and form one Board of Directors for the management of their affairs.

By the 11th section its capital stock and dividends were made forever exempt from taxation, and its road, fixtures, and appurtenances were exempted until the same should pay an interest of not less than ten per cent. per annum.

In April, 1874, the Company did "make joint stock" with the St. Louis and Iron Mountain R.R. Co., "and "formed," with it, "one Board of Directors for the manage- "ment of their affairs," under the name of the St. Louis Iron Mountain and Southern Railway Company.

The road, fixtures, and appurtenances have never paid an interest of ten per cent. per annum.

The State should, therefore, be restrained, as prayed in the bill, from levying the proposed tax.

I.

The attempt of the State to now tax the road, &c., is based upon the two following propositions:

1. That by reason of the union of the Cairo and Fulton Co. with the Missouri corporation the right of exemption was forfeited, and the property was thenceforward subject to taxation regardless of its income.

2. Should it be found that uniting the two companies worked no such result, yet, as a matter of fact, the exemption was terminated in 1882 by the road paying ten per cent. interest.

We shall show that both of these propositions are without foundation, and thus dispose of the case.

The word *consolidate*, with its derivations, is frequently used in this discussion. It has no fixed legal meaning. To understand this at the outset will avoid much of the confusion and misunderstanding already apparent in the case.

The word is used in the statutes, and in the opinions and decisions of the Courts, to indicate the uniting of two or more corporations, regardless of the legal effect of such unions.

For instance, the union of two or more railroad companies, where the property brought into the new concern by

each of the contracting parties is held to be subject to the provisions of the original charters respectively, is called a *consolidation*.

The Delaware Railroad Tax, 18 Wall., 206.

So where the union results in the destruction of one of the companies, but not of the other, it is called a *consolidation*.

Cent. R.R. and Banking Co. vs. *Georgia*, 92 U. S., 665.

So where the union results in the entire destruction of all the uniting companies and the creation of a new corporation with rights and powers quite distinct from those which had been enjoyed by the defunct concerns, such uniting is called a *consolidation*.

Shields vs. *Ohio*, 95 U. S., 319.

Upon this point we also quote the Supreme Court of Alabama:

"Another and more serious error, inasmuch as it constitutes the foundation of almost the entire argument on "this point of complainant's counsel, is the assumption "that the words consolidation, consolidate, and consolidated have a fixed, definite, and accepted judicial meaning and adjudged construction, according to which "they are inapplicable to a union of two or more companies, in such a way that one of the original corporations only was continued in existence, while the others "were merged or absorbed in it, and that the dissolution of "all the old corporations and the creation of a new one are "essential to consolidation according to the American view "of the subject. Possessed by these convictions, as the "Chancellor also seems to have been, that this was the long-"established and invariable meaning of the terms consolidation and consolidated, counsel erect upon the narrow basis "afforded by the frequent use of these two words (more "convenient than any other) in the agreement of eighth of

" August, 1866, and in the legislative acts of the same year " relating thereto, almost the entire superstructure of their " argument."

It is only by keeping in view this indiscriminate use of the word that the argument of counsel will be intelligible, or the decided cases be understood. In our use of the word here we shall try and confine it as indicating simply what the companies in any given case did in their efforts to unite, and not to describe the legal effect of such action. It is the most convenient word to use for that purpose.

1. *We say, then, first, that the consolidation of the Cairo & Fulton and St. Louis & Iron Mountain Companies was made by the former Company, under the provisions of section* 10 *of its charter-act.*

The intent of the Legislature in passing the act of 1853 becomes perfectly obvious in reading the act itself. No extrinsic evidence is necessary. A complete system of roads, extending from the Mississippi river, opposite Cairo, through the States of Missouri, Arkansas, and Texas, with lateral branches to various points, was about to be inaugurated. This was a project of vast importance to the State of Arkansas, which up to that date was without railroad facilities. It brought her into connection with the markets of the Northwest, and looked to a rapid increase of her wealth and population. She was evidently eager that the whole scheme should be consummated, and the act looks solely to that end. The road in that State was to be but a link in the general plan. The second section of the charter authorizes the Company to survey and construct a road " from " a point on the Mississippi river, opposite the mouth of the " Ohio, *in the State of Missouri*, by way of Little Rock, to " the Texas boundary line, near Fulton, in Arkansas, with

" one or more branches to the western boundary of this " State, with the view of entering the northeastern and the " northwestern portions of Texas, and there connecting with " projected railroads in that State, from the bay of Galves- " ton, running up the valleys of the Brazos and Trinity " rivers: * * * *And provided further*, That said Com- " pany shall obtain the right of way through Texas on " such route as shall be deemed most expedient, with as " many lines of rails or tracks as they shall choose to make."

This section seems to contemplate that the States of Missouri and Texas will adopt the corporation thus created, and the whole line from the Mississippi river to the objective points in Texas be at once inaugurated by the Cairo & Fulton Co. At least the whole scheme of the road, as well outside the State of Arkansas as within it, is here laid down, and the new-made Company is authorized, so far as the State could confer such authority, to construct it.

The tenth section of the act, however, recognizes that the portions of the line lying in Missouri and Texas may be constructed by corporations of those States, respectively, and hence provides that the Arkansas Company " shall have " power to unite their road with the southern end of the " Missouri road at some suitable point on the line which " divides these two States, and its southern end with any " road coming in from Texas, at such point on the boundary " line which divides that State and Arkansas that may be " deemed most eligible."

By this same section the Company is empowered to make any contracts with other companies which will facilitate the early construction of the whole line, or it may make joint stock with companies of other States and consolidate the roads under one management. In a word, everything was authorized which might in any way promote the object

sought by the Legislature. The power to consolidate is given in these words:

"Said corporation shall have power * * * to make "joint stock with any other railroad company in this or any "other State, and to form one Board of Directors for the "management of their affairs."

As the initial step to such agreement, the Directors passed a resolution which was subsequently approved by the stockholders. This resolution followed the words of the charter. It declared that the Company would enter into an agreement with the Missouri Company for the purpose of "uniting and consolidating," * * * * "and for "making joint stock of the two companies and forming one "Board of Directors for the management of the affairs of "said companies," &c.

In pursuance of this (and a resolution of similar import passed by the St. Louis and Iron Mountain Co.) the Directors of the two corporations came together, entered into the agreement found in the record, formed one Board of Directors for the management of their affairs, provided for making joint stock of the stock of the two companies, and determined that thereafter the conduct of their business should be in the name of the St. Louis, Iron Mountain & Southern Railway Company.

It is certain the Cairo and Fulton Co. *supposed* its original charter authorized all this. It acted in the utmost good faith. The transaction was a public one, and at once went upon the public records. The State authorities and the whole world were apprised of what was done.

After eight years of silent acquiescence on the part of the State, it now comes to deny that the authority to so consolidate can be found in said charter.

The contention is (1) that the word "consolidate" is es-

sential to grant the power for which the plaintiff contends, and it is not found in the statute, and (2) if the words used in section ten were sufficient to authorize a consolidation, the right ceased when the road was constructed.

The first point we have already disposed of. The word "consolidate," if used by the Legislature, would have created confusion. As we have seen, it would not have explained itself. If used in connection with the words now in the statute, it would have derived its construction from them, and added nothing to the clear meaning of the section, or the intent of the Legislature. Besides, the power was expressly given to *unite* with other roads, and *that* we have termed *consolidation*.

The second point is based on a construction of the statute dependent upon punctuation. In the authorized printed copy of the statutes of the State a *period* is found after the word "affairs," as follows:

"* * * and also to make joint stock with any other rail-
"road company in this or any other State, and to form one
"board of directors for the management of their affairs."

The balance of the section is printed as an independent sentence in the following words:

"If it should be found necessary to facilitate the early
"construction of their said road, the contract or agreement
"of the respective boards shall form a part of their respec-
"tive charters whenever the same may be entered into and
"recorded with their charters."

It is now discovered, thirty years from the date of the same, that in the enrolled or manuscript act, found in the office of the Secretary of State, there is a comma after the word "affairs," and the succeeding word "if" is written with a small "i."

Upon this discovery the State comes forward to claim that the words "*if it should be found necessary to facilitate "the early construction of their said road*" are a limitation upon the right of consolidation—that the right terminated when the road was built.

We answer:

1. The act of 1853 is not only a law—it is a *contract* as well. The State, as a party to that contract, has no peculiar rights. It is bound by the same rules of construction as other parties, and is equally amenable to the ordinary laws affecting contracts. It was the sole custodian of the contract in question. It gave out to the other party, and to the world, what purported to be an official copy. For thirty years both parties regarded this copy as accurate, and acted upon it. On one side, the State understood that the Cairo and Fulton corporation had consolidated with the Missouri Company in pursuance of its charter rights, and hence refrained from taxing it. The Supreme Court of the State had declared in explicit terms that "the Cairo & "Fulton Railroad Company was expressly empowered by "the tenth section of its charter to make such consolida- "tion."

Zimmer vs. *The State*, 30 Ark., 680.

The authority of the Company as thus stated by the Court was nowhere questioned.

On the other hand, the Company, acting on this common understanding—derived by both parties from the printed copy—entered into the agreement with the foreign corporation, and invested vast sums in the enterprise.

Under similar circumstances, a private party, who sought to take advantage of a discrepancy between the copy and the original of a contract, would be turned out of a court of justice.

But "when a Government enters into a contract with "an individual it deposes, as to the matter of the contract, "its constitutional authority, and exchanges the character "of legislator for that of a moral agent *with the same "rights and obligations as an individual.*"

Alexander Hamilton.

"The United States are as much bound by their contracts "as are individuals."

Sinking Fund Cases, 99 U. S., 719.

In *Pease* vs. *Peck*, (18 Howard, 595,) this Court passed directly upon the question of variance between the printed copy of a statute and the enrolled act. There the discrepancy was much more pronounced than in the case at bar. The difference consisted of important words, and not merely of punctuation.

The Court, by Mr. Justice Grier, said:

"It is no doubt true, as a general rule, that the mistake "of a transcriber or printer cannot change the law; and "that when the statutes published by authority are found "to differ from the original on file among the public ar- "chives, that the courts will receive the latter as containing "the expressed will of the Legislature in preference to the "former. Yet, as the people who are governed by the "laws, and the courts who administer them, practically "know the law only from the authorized publication of "them, the propriety of recurring to ancient, altered, and "erased manuscripts for the purpose of changing their con- "struction after a lapse of thirty years, and after their con- "struction has been long settled by the court, and has en- "tered as an element into the contracts and business of the "citizens, may well be doubted. The reception and long "acquiescence in them, as printed and distributed by au- "thority, by those who had it always in their power to "alter or amend them, and did not, may justly be treated

"as a ratification of them in that form by the sovereign "people."

* * * * * *

"The question presented in the present case is one in "which the interest of citizens of other States come di- "rectly in conflict with those of the citizens of Michigan. "The territorial law in question had been received and "acted upon for thirty years, in the words of the pub- "lished statute. It had received a settled construction by "the courts of the United States as well as those of the "State. *It had entered as an element into the contracts "and business of men.* On a sudden, a manuscript statute "differing from the known public law is disinterred from the "lumber-room of obsolete documents; a new law is promul- "gated by judicial construction, which, by retroaction, de- "stroys vested rights of property of citizens of other States, "while it protects the citizens of Michigan from the pay- "ment of admitted debts."

The principles which determined the Court in this case are peculiarly applicable to the case at bar. A citizen of Missouri contracted with the Cairo & Fulton Co., on the faith of the Arkansas statutes, as set forth in the "author- "ized publication of them." Resting upon the obvious meaning of the law, as thus published, it invested large sums of money. The demand the State now makes, based on the enrolled act, would, "by retroaction, destroy vested "rights of property of citizens of other States," while it protected the citizens of Arkansas by lessening their taxes.

The distinction should also be kept in mind that, in *Pease* vs. *Peck*, the Court was dealing with an ordinary public statute. Where the statute is also a contract the reasons would apply with greater force.

2. Thus far, in our answer to the claims of the State on this point, for the purposes of the argument only, we have conceded that changing the *period* after "affairs" to a

comma would make the phrase, which follows that word, a limitation on the right to consolidate. We now deny that it would have that effect.

Reading the section as it is punctuated in the enrolled act, the most that can be said of it is that it is ambiguous. That is, read in a literal way, and as detached from the balance of the act, it may bear the construction claimed. It would, however, equally bear the construction for which we contend. But when read in connection with the whole act, and in view of the evident intention of the Legislature, it makes no difference whether a *period* or a *comma* is used; the meaning is clear.

Punctuation will not be allowed to thwart the intention of the law-maker. In *Cushing* vs. *Warwick*, (9 Gray, Mass., 382,) the Court say: "Punctuation is not to be re-"garded in construing a statute."

In *United States* vs. *Railroad Cars*, (1 Abb. U. S., 196:) "The punctuation of a statute, as printed, affords no very "decisive test of construction, but may be regarded as one "indication of the meaning."

In *Hamilton* vs. *Steamboat* "*R. B. Hamilton*," (16 Ohio St., 428:) "Courts will in the construction of statutes, for "the purpose of aiming at the real meaning and intention "of the law-makers, disregard the punctuation, or repunc-"tuate, if need be, to render the true meaning of the stat-"ute."

This Court in *Ewing* vs. *Burnet* (11 Pet., 41) use the following language:

"Punctuation is a most fallible standard by which to in-"terpret a writing; it may be resorted to where all other "means fail; but the Court will first take the instrument "by its four corners, in order to ascertain its true meaning; "if that is apparent on judicially inspecting the whole, the "punctuation will not be suffered to change it."

These principles applied to section ten clear it from doubt. The Legislature in enacting the charter sought to do everything in its power to secure a railroad from Cairo into Texas, which should be controlled and operated by an undivided authority. If its own corporation should not be adopted by Missouri and Texas, and the whole line be constructed from the start by the Cairo & Fulton Co., as provided in the second section of the act, then the Cairo & Fulton Co. might consolidate with the corporations of these other States, and have "one Board of Directors for the "management of their affairs." This language looks directly to a completed line, not simply to the work of construction.

The State was certainly willing that its corporations should consolidate with those of other States. It is admitted that if the consolidation had been made "to facilitate the early "construction of the road," the power would have been found in this section. But such consolidation would have continued to exist *after* the road was completed. The Legislature well knew this, and had it intended to limit the corporation it was creating to the privilege of consolidating *for the purposes of construction only*, it would have provided for terminating any such agreement whenever the lines were completed.

There is no doubt but the State was anxious to secure an early construction of the line, and made two provisions in this same section looking to that end. 1st. The Company was authorized "to make any contract or agreement with "any other railroad company in reference to this business "that would best insure early construction," &c. 2d. The Company might, to facilitate early construction, record any such "contract or agreement," which it had made with other companies, and the same would then form part of its charter.

This latter provision is readily understood. Companies

entering into agreement with the Cairo & Fulton Co., where large sums of money were to be at once expended in building, might well ask the guaranty that such agreement should have the force of a provision of the charter.

Or if the two corporations, after having contracted "in "reference to this business that may best insure the early "construction," &c., found it necessary to give guaranties and assurances to capitalists to induce them to assist in the enterprise, then the "contract or agreement" properly filed and recorded was to have all the force and effect of the original law. This could only be done promptly and efficiently by some such provision.

These provisions, looking to the early construction of the road, are quite independent of the granted power to consolidate. When the section deals with consolidation it does not use the words "contract or agreement." It provides in simple terms that the Company may "make joint stock with "any other railroad company in this or any other State, "and form one Board of Directors for the management of "their affairs." There that subject-matter stops, and the section again takes up the subject of facilitating early construction by "contract or agreement" made with other roads *for that special purpose*, and provides that such "contract "or agreement" may be recorded with the charter and thence form a part of it.

With a period after the word "affairs" there is no denying this construction. No other was thought of until the comma was imported. But, with the comma there, this is still the natural rendering of the section, and does no violence to the rules of punctuation.

But suppose the time within which consolidation was permitted by the charter was confined to that period before the road was constructed. The evidence is clear that the road

was not fully completed until long after consolidation took place. It is true the complaint states that the road was completed on the 5th day of December, 1873, but that must be taken as referring only to the main line. The branches are equally provided for by the charter, and are as certainly a part of the *road* as the trunk. They were all constructed after April, 1874, date of consolidation.

If the Cairo and Fulton Co. could find no warrant in its charter to authorize consolidation with a foreign corporation, when it attempted to do so in 1874, then the authority for its acts must be found in some other statute, or it simply attempted to do a vain thing which had no legal effect, and its relations to the State remain unchanged. The learned Judge who delivered the opinion of the Court below evidently saw the force of this proposition. In order to reach the desired end of taxing the railroad property it was not sufficient to hold simply that the charter did not permit the consolidation. The Court was compelled to find in addition that the consolidation was lawful under the terms of some subsequent statute. It must also be a statute which was limited by the inhibitions of the Constitution of 1868. This was no easy thing to do, and the Court came haltingly to the work. It was first compelled to repudiate the language it had used in *Zimmer* vs. *The State*, (*supra.*) namely, that the Cairo and Fulton Co. "was expressly empowered by "the tenth section of its charter to make such consolida-"tion." Having done this it must take the next step and find that the companies did consolidate under the general law of 1868, and subject to the limitations of the constitution adopted that same year.

The opinion on this point (Rec., 79) uses the following language: "We do not mean to say that the consolidation "of these two companies was, at the time it took place,

"unlawful. The act of July 23, 1868, providing for a "general system of railroad incorporations, was then in "force; and its forty-third section (sec. 4969 of Gantt's "Digest) authorized consolidation, and declared that the "company springing from such union should succeed to all "the benefits, rights, franchises, lands, and property of "every description belonging to the roads so consolidated."

The Court then states the fact that the Constitution of 1868, containing limitations on the power of the General Assembly to grant immunities from taxation, had been adopted previous to the passage of the act, and continues: "Now, if the act of 1868 was the sole authority for the "consolidation at the time that it actually took place, there "can be no doubt that the plaintiff in this suit took the "Cairo and Fulton charter, subject to the constitutional "provisions then in force."

This is not the language of strong conviction. It is emphatically the language of doubt and hesitation. "*If* "*the act of* 1868 *was the sole authority*," &c.! Could the consolidation have taken place partly under the authority of this act and partly under that of some other act? What was the real opinion of the Court on this point? It is certainly not given.

An examination of the act of 1868 discloses abundant reason why the learned Judge hesitated to declare that the consolidation in question was made in pursuance of its provisions. It is an act entitled "An act to provide for a "general system of railroad incorporation." It consists of forty-five sections. The first forty-two relate wholly to the incorporation of future domestic railroad companies. The forty-fourth section provides for the repeal of all conflicting enactments, and the forty-fifth, that the act should take immediate effect. The forty-third section, referred to by the Court, we have printed in full in our statement.

All the sections of this act must be construed together. It is dealing solely with domestic corporations, providing for their organization and regulation.

The forty-third section also deals with domestic corporations, and none other. They are the corporations of the State which shall thereafter be organized under that act, and such as were then chartered. These are by the section allowed to consolidate with each other. Nothing is said about corporations of other States. Consolidation with such is not provided for. On the contrary, the language effectually precludes any such construction. The latter half of the section reads as follows:

"* * * When such purchase is made, or consolidation "is effected, the Company shall have and be entitled to all "the benefits, rights, franchises, lands and tenements, and "property of every description belonging to said roads so "sold or consolidated; and shall be liable to all the pains "and penalties imposed by their respective charters."

It cannot be presumed that the Assembly used this language with reference to the corporations of other States. It would not attempt to legislate for Missouri or Texas. How could it say that the Company resulting from a consolidation should have and be entitled to all the property of one of the parties to such a contract, which should lie outside the territorial boundary of the State? The section is only kept in harmony with its own terms and the meaning of the whole act, by limiting its scope to domestic corporations. Further, this is the construction given it by the General Assembly itself. March 16th, 1881, (~~three~~ thirteen years after the date of the act in question,) it passed an act specifically providing for the consolidation of Arkansas corporations with those of other States. (Session Laws, 1881.) No reference is made in this act to the law of 1868. This

is a legislative construction as strong as one can be made: There is no law allowing the consolidation of domestic and foreign corporations and the Assembly enacts one.

The argument of counsel for the defendant, on this point, is not aided by the fact that the plaintiff at one time printed a pamphlet containing various Missouri and Arkansas statutes relating to railroad companies, among which it placed said section forty-three. The document contained as well section ten of the charter of the Cairo and Fulton Co., and was nothing more than a compilation by some clerk, or other employé of the Company, of such statutes of the two States as he thought related, or might relate, to the interests of the corporation. Such a struggle for support only indicates the weakness of the position.

We conclude, therefore, that the uniting of the Cairo and Fulton Co. with the Missouri corporation was under the provisions of its own charter, and was not, and could not have been, under the general incorporation law of 1868.

II.

The Cairo and Fulton Company carried into this union the immunity from taxation, as to that portion of the property lying within Arkansas, which it had formerly enjoyed.

The privilege of consolidating with foreign companies, and the exemption from taxation, were distinct parts of a single contract. The exercise of the privilege could not destroy the exemption. This the Court below and the counsel for the State virtually admit. At least, this much is certain: Had there been no consolidation the Cairo and Fulton Co. would have remained continuously exempt from tax on its capital stock and dividends, and exempt from other tax until its road paid an interest on its cost and equipment

of ten per cent. per annum. This has never been questioned. The Supreme Court of the State, in deciding this case, say:

"The Constitution of 1836, in force when the charter "was granted, contained no restraint on the action of the "legislature in granting immunity from taxation. Hence "the General Assembly had the power to bind the State in "relinquishing its power to tax this corporation."

And this honorable Court has frequently decided that such power on the part of a legislature, once exercised, becomes an irrepealable part of the charter-contract. It is true the immunity must be granted in explicit terms. But on that point there can be no occasion for controversy in this case. The exemption forms a complete section of the charter. It follows the section providing for consolidation, and reads as follows:

"Sec. 11. That the capital stock and dividends of said "company shall be forever exempt from taxation; the "road, fixtures, and appurtenances shall be exempt from "taxation until after it pays an interest of not less than ten "per cent. per annum."

There can be no doubt but that the Assembly intended this exemption to follow the property, whether the company exercised its right of consolidation or not. We have already alluded to the general scheme of railroad construc- which the State sought to encourage and build up by this charter; its attempt to enlarge the charter rights by reference to the Mississippi Valley charter, and the declaration that the charter should be liberally construed for the purposes intended.

What was the object of all this generosity? What consideration was the State to have? Obviously, the large in-

crease of wealth and population which were expected to follow the building of the road—not the link located in Arkansas, *but the whole line*. The State wanted the entire line, and wanted it promptly. It was willing, to that end, to exempt such line, so far as it could, from the burden of taxation; to allow its corporation to make contracts which should have the force of law by simply filing the same with its charter, and to consolidate with companies building portions of the line in Texas and Missouri. It is simply impossible to believe that, while the Assembly said in one section, "you may consolidate," and in the next, "you shall "be free from taxation," it at the same time meant to say, "if you do consolidate, I will tax you."

Take the theory of the defence, namely, that the power to consolidate was only granted for the purpose of expediting construction, is it not clear that immunity from taxation was equally given for the same purpose? How absurd, then, to claim that the legislature intended that the exercise of one privilege was the destruction of the other.

We therefore repeat that it was clearly the *legislative intent* that the immunity from taxation should continue with the property after the company had seen fit to exercise its right of consolidation. It is equally clear that the corporation accepted its charter with this same understanding.

Is there any valid reason why the original intention of the parties to the charter-contract should now be disregarded?

The contention that there could be no consolidation under the charter after the road was finished, we have already considered; as also the claim that the consolidation was in pursuance of the forty-third section of the law of 1868.

But it is urged that although the tenth section of the

charter may have authorized it, yet a consolidation under its terms resulted in creating a new corporation shorn of the immunity which the old one enjoyed.

The general rule of law, as settled by a well-defined line of decisions, establishes the converse of this proposition. It is this: Where railroad companies consolidate, the new organization enjoys, as to the property brought into it by each consolidating company, all the rights, privileges, franchises, and *immunities* originally enjoyed by the consolidating companies respectively. If the property of one of the companies forming the union was by its charter exempt from taxation, then such property will continue exempt after the consolidation. If all the companies originally enjoyed such exemption, then the consolidated company will hold all its property exempt. The apparent exceptions to this rule we will consider hereafter.

As early as 1850 this Court laid down the rule in *Philadelphia & Wilmington R.R. Co.* vs. *Maryland*, (10 How., 427.) In that case there were three companies, one of which owned a railroad in Pennsylvania, one in Maryland, and one in Delaware, each chartered by their respective States. Under the legislation of those States they were consolidated into one company, with the name of the Pennsylvania corporation. One of the charters granted by Maryland had exempted the shares of the capital stock of its company from taxation. After the consolidation the new company sought to apply this exemption to other portions of its road. The Court denied its right to do this, and stated the general principle applicable to the case in the following language:

"Now, as these companies held their corporate privileges
"under different charters, the evident meaning of this pro-
"vision (the consolidation law) is that whatever privileges
"and advantages either of them possessed should in like

" manner be held and possessed by the new company, to " the extent of the road they had respectively occupied be- " fore the union; that it should stand in their place, and " possess the power, rights, and privileges they had sever- " ally enjoyed in the portions of the road which had pre- " viously belonged to them."

The same question, among others, arose in the *Delaware Railroad Tax* case, (18 Wal., 206.) Mr. Justice Field, speaking for the Court, first stated the doctrine that States might grant immunity from taxation to individuals or corporations, and that when such immunity was conferred by charter it became a part of the contract, " and equally in- " violate with its other stipulations." He then proceeded to reaffirm the doctrine announced in 10 Howard, (*supra*,) as follows:

" The new company (consolidated company) was clothed " by the legislature of Delaware, so far as that legislature " could clothe it, with all the rights and privileges of both " the original companies; but as the Maryland company " took under the legislation of Maryland only exemption " from taxation of its shares in Maryland, *the privilege of* " *the new company in this matter could only be a similar* " *exemption in that State*, not a similar exemption of the " shares of its capital stock from taxation in Delaware. The " new company stood in each State as the original company " had previously stood in that State, invested with the same " rights and subject to the same liabilities."

In *Tomlinson* vs. *Branch*, (15 Wall., 460,) the question of exemption from tax arose where both the consolidating companies held their charters from the legislature of South Carolina, and the roads were wholly within that State. By the consolidation in this case, the South Carolina Canal and Railroad Company became merged into the South Carolina Railroad Company. By its charter this latter company was

perpetually exempt from taxation. It sought to hold, as also free from taxation, the property brought to it by the union with the former company, which at the time of the consolidation was not exempt. This the Court denied upon the authority of *The Phila. W. & B. R.R. Co.* vs. *Maryland*, (*supra.*)

The City of Charleston vs. *Branch* was decided with the *Tomlinson* case, the opinions in both delivered by Mr. Justice Bradley. The application of the principle to the consolidating companies is here tersely stated by the learned Justice:

"All parts of the road and property formerly belonging "to the South Carolina Canal and Railroad Company, and "all appendages and appurtenances thereof, are liable to "taxation, whilst all property acquired by the South Caro- "lina Railroad Company directly under its own charter, and "for purposes connected with its original road, is exempt "from taxation."

It is also clearly held in this case that all property acquired after the consolidation, which was "for the accom- "modation of the business belonging to the road" originally exempt, would also be exempt, and such as was acquired for the joint accommodation of the entire system would, "*pro tanto*, and in fair proportion, be exempt from "taxation."

The statute providing for the consolidation of these two South Carolina companies declares that upon complying with certain conditions the South Carolina Canal and Railroad Company "shall be *merged*" in the South Carolina Railroad Company. In view of this language the Court holds that those corporate rights and franchises of the former company which appertain to its existence and functions as a corporation became extinct. "*But all its rights and*

" *duties, its privileges and obligations, as related to the pub-*
" *lic or to third persons, remain and devolve upon the new*
" *company.*"

Thus a consolidation which works a dissolution of one of the corporations is held to keep alive, as to the property formerly owned by the defunct company, all the rights, duties, privileges, &c., before pertaining to such property.

These cases were again before the Court in *Branch et al.* vs. *City of Charleston et al.*, (92 U. S., 682.) Mr. Justice Bradley, again delivering the opinion of the court, says the case was substantially settled by the decisions from which we have just quoted. He adds:

"The result to which we came in those cases was substan-
" tially this: That the respective roads and the property of
" the two companies, which had become consolidated in the
" hands of the South Carolina Railroad Company, namely,
" that of the Canal and Railroad Company, and that of the
" Louisville and Charleston Railroad Company, respectively
" retained their original *status* towards the public and the
" State, the same as if they had not been consolidated under
" a single proprietorship. As one of these roads has become
" taxable and the other has not, the rights of the State and
" the public, growing out of this accidental diversity, may
" sometimes raise questions of some embarrassment. This
" occasions the only difficulty remaining to be solved in
" these cases."

The same doctrine is held in *Central Railroad & Banking Co.* vs. *Georgia*, (92 U. S., 665.) Here the Cent. R.R., &c., Co. was, by its original charter, exempt from tax other than one-half of one *per centum* on its annual net income; the Macon and Western Co. (also a Georgia corporation) had no such exemption.

The two companies, by an act of the Legislature, were authorized to "unite and consolidate the stocks of the said

" two companies, and all the rights, privileges, immunities, " property, and franchises belonging or attaching to said " companies, under the name and charter of the said 'The " 'Central Railroad and Banking Company of Georgia,' in " such manner that each and every owner and holder of " shares of the capital stock of the Macon and Western " Railroad Company shall be entitled to and receive an equal " number of shares of the capital stock of the consolidated " companies."

A consolidation effected under this statute was held not to be a surrender of the existing charters of the two companies, nor the creation of a new company, but it was distinctly held that the consolidated company continued to possess all the rights and immunities which were conferred upon each company by its original charter. The exemption from taxation was continued as to that portion of the road formerly belonging to the Central Co., while that part which had belonged to the Macon Co. was liable to be taxed as it had been theretofore.

The Court, in discussing the effect of consolidation, say:

" It may be that the consolidation of two corporations, " or amalgamation, as it is called in England, if full and com- " plete, may work a dissolution of them both, and its effect " may be the creation of a new corporation. Whether such " be the effect or not must depend upon the statute under " which the consolidation takes place, and of the intention " therein manifested. *If in the statute there be no words of* " *grant of corporate powers, it is difficult to see how a new* " *corporation is created. If it is, it must be by implica-* " *tion; and it is an unbending rule that a grant of corpo-* " *rate existence is never implied. In the construction of a* " *statute every presumption is against it.*"

In this connection the Court discusses the case of *McMahan* vs. *Morrison*, (16 Ind., 172,) which held that where

three corporations had consolidated under an act of the Legislature, authorizing them to merge and consolidate their stock "*and make one joint company*," the consolidation worked a dissolution of the merging corporations, and at the same instant the creation of a new corporation with property, liabilities, and stockholders derived from those then passing out of existence. This language of the Indiana Court was quoted approvingly in *Clearwater* vs. *Meredith*, (1 Wall., 40.) But the Court now discards the doctrine, and declares that its assertion was not necessary in deciding either *McMahan* vs. *Morrison* or *Clearwater* vs. *Meredith*.

The *Southwestern Railroad Company* vs. *Georgia*, (92 U. S., 676,) was decided at the same time with that of the *Cent. R.R., &c., Co.* vs. *Ga.*, Mr. Justice Strong delivering the opinion in both cases. In this case the two consolidating companies were *each* exempt from taxation beyond a fixed amount. The Court finds that the resulting company held all its property free from greater taxation, although it finds at the same time that the consolidation, under the peculiar form of statute providing for it, worked the extinguishment of one of the companies. Thus we have the case of a corporation consolidating with another in such way as to destroy its corporate existence, yet the immunity from taxation follows the property into the new organization.

The doctrine that exemption from taxation is not forfeited was again clearly stated by this Court in *Chesapeake and Ohio Railroad Company* vs. *Virginia*. (94 U. S., 718.)

Legislative acts of Virginia and West Virginia provided for the incorporation of the *Covington and Ohio Railroad Company*, providing in the charter, "That no taxation upon "the property of the said company shall be imposed by the "State until the profits of the company shall amount to "ten per cent. a year on its capital."

This company was not organized, but the *Virginia Central Railroad Company* was authorized by the acts of the two States to change its name to the *Chesapeake and Ohio Railroad Company*, and build the proposed road from Covington to the Ohio river, and be entitled to all the benefits which it was proposed to confer on the Covington and Ohio Co. It contracted with the Commissioners of the two States to do this, and the contract was made a part of its charter.

Here there was no actual consolidation, for the Covington & Ohio was never organized. The Chesapeake & Ohio, simply by the performance of its part of the contract, became entitled to such benefits as the Covington & Ohio would have enjoyed had it come into existence. The Court held that such portion of the road, with the property incident thereto, as the Covington & Ohio would have owned and controlled had it been organized, was free from taxation. The exemption extended that far, but did not extend to the property formerly owned by the Virginia Central.

The Court, however, say: "Had a consolidation taken "place between it (Covington & Ohio) and the Virginia "Central, and had the two companies become one corpora- "tion, together owning the property of both, that portion "of the property brought by the Covington & Ohio into "the aggregate would have continued exempt. But ex- "emption of other property was not contemplated by the "charter. So much is settled by repeated decisions of this "Court." Citing, *Phila., Wilmington & Baltimore R.R. Co.* vs. *Maryland*, *The Delaware R.R. Tax case*, *Tomlinson* vs. *Branch*, *Cent. R.R., &c., Co.* vs. *Georgia*.

In *Green County* vs. *Conness* (109 U. S., 104) municipal bonds were voted to a railroad corporation which afterwards consolidated with another such corporation, and it was contended that the consolidated company had not the right to own and dispose of the bonds.

The law under which the consolidation was made is as follows: "It shall be lawful and competent for said com- "pany to make such arrangement with any other railroad "company to furnish equipments and to run and manage "its railroad as it may deem expedient and find necessary, "or to lease the same, or to consolidate it with any other "company upon such terms as may be deemed just and "proper."

The Court in deciding the case uses the following language: "If only the sale of the road to another company "had been authorized and made, then it might very plausi- "bly have been contended that the purchasing company took "and held it under its own charter only, without the fran- "chises and privileges connected with it in the hands of the "vendor company; but 'consolidation' is not sale, and when "two companies are authorized to consolidate their roads "it is to be presumed that the franchises and privileges of "each continue to exist *in respect to the several roads so "consolidated*." Citing *Tomlinson* vs. *Branch*, and *Branch* vs. *City of Charleston*.

These cases established the rule applicable to the case at bar. If the consolidation of the Cairo and Fulton Co. with the Missouri Company was in pursuance of its charter rights, then there is no question of constitutional limitation to consider. The company was acting within the contract made with the State, which the subsequent constitution could not avoid. That settled, it follows clearly, from the cases cited, that the exemption from taxation continued after the consolidation. While section ten clearly provides for consolidation with foreign companies, it certainly does not contemplate a dissolution of the old and the creation of a new corporation as the result. The provision is to make joint stock with companies of other States, "and form one board of direc-

tors for the management of *their affairs*." Whose affairs? Evidently the affairs of the consolidating companies. And these were to be managed by one board of directors *after* the consolidation. The affairs of the Missouri Company would be in Missouri; the affairs of the Arkansas Company in Arkansas. If, by forming one board of directors, one company was formed, then, as to the property of the company within the boundary of Arkansas, it was and is an Arkansas corporation. That a new name was adopted did not alter the legal relation of the corporation to the State. In *Muller* vs. *Dows*, (94 U. S., 447,) a consolidation had taken place between an Iowa corporation and one in Missouri, under an Iowa statute, which authorized such railroads to "merge "and consolidate the stock of the respective companies, "making one joint-stock company of the railroads thus con- "nected." Missouri had a similar statute. Under the peculiar wording of these consolidating acts, the Court holds that the two companies became one, but adds: "*In "the State of Iowa that* ONE *was an Iowa corporation, exist- "ing under the laws of that State alone.*"

A still stronger case, showing that one company, composed of the same natural persons, may act as distinct corporate entities in two or more States, is that of *Clark* vs. *Barnard*, (108 U. S., 436.)

A Connecticut railroad corporation had purchased the property and franchises of a Rhode Island corporation, whose line of road was in the latter State, and the Legislature of Rhode Island ratified and confirmed the sale, and provided that the purchasing company, by and in its own name, should have, use, exercise, and enjoy all the rights, privileges, and powers which had been granted to the purchased company, and be subject to all the duties and liabilities which had been imposed on the former Rhode

Island Company by its charter and the general laws of the State.

In this case it was contended that the Connecticut Company, which had thus bought the Rhode Island Company, was not a Rhode Island corporation, and, being wholly a Connecticut corporation, had no authority to purchase or own the road in Rhode Island, or to receive the grant of a franchise in the latter State.

Commenting upon this, the Court, by Mr. Justice Matthews, says:

"If it (the Connecticut corporation) had had no previous "existence as a corporation under the laws of Rhode Island, "it would have become such by virtue of the act in ques- "tion." (The act ratifying the purchase.) "For although "as a Connecticut corporation it may have had no capacity "to act or exist in Rhode Island for these purposes, and no "capacity by virtue of its Connecticut charter to accept "and exercise any franchises not contemplated by it, yet the "natural persons, who were corporators, might as well be a "corporation in Rhode Island as in Connecticut; and, by "accepting charters from both States, could well become "a corporate body by the same name, and acting through "the same organization, officers, and agencies, in each, with "such faculties in the two jurisdictions as they might sever- "ally confer. The same association of natural persons "would thus be constituted into two distinct corporate en- "tities in the two States, acting in each according to the "powers locally bestowed, as distinctly as though they had "nothing in common, either as to name, capital, or mem- "bership. Such was in fact the case in regard to this com- "pany, so that in Rhode Island it was exclusively a corpo- "ration of that State, subject to its laws and competent to "do within its territory whatever its legislation might au- "thorize."

But in the case now before the Court, it cannot be held that a new company was formed in the sense of a new cor-

poration. There were "no words of grant of corporate pow "ers." They cannot be implied. Corporations cannot be created in that way. This Court has decided that in Cent. R.R., &c., Co. *vs.* Georgia, (*supra.*) If, then, in *Muller* vs. *Dows*, the new company was, *in* Iowa, a corporation *of* Iowa, and in Clark *vs.* Barnard the Connecticut Co. was a corporation in Rhode Island, much more would the St. Louis, Iron Mountain and Southern Company, *in* Arkansas, be a corporation *of* Arkansas.

The Georgia and South Carolina cases, from which we have quoted, carry the rule much farther than necessary to maintain our contention in this case. There the consolidating companies held their charters from the same Legislature, and their roads were wholly within the same State. The consolidations were under the provisions of statutes passed subsequent to the charters. The Court also finds in each case that the consolidation was such as to work the extinction of one or more of the consolidating companies, *yet immunity from taxation, granted by the original charter, followed the property into the new organization.* The reasons for the rule apply with greater force where the uniting companies hold their charters under different States.

Indeed, so well settled does it seem to be that the consolidation of two or more railroad companies *created by different States* makes it necessary that each of the original companies preserve its existence, that, in the issue of the *Central Law Journal* of November 16, 1883, the writer of an article on the subject of the jurisdiction of Federal Courts as affected by consolidation, remarks:

"The consolidation of corporations organized and exist- "ing under the laws of the same State creates an entirely "new and distinct corporation. But this is not the result "where corporations owe their existence to different sove- "reignties; although, in fact, they may be so united as to

" have a physical connection, and be practically one body,
" yet they remain 'separate corporations in each State.'
" The only effect of such a consolidation is the creation of
" a community of interest. The powers, rights, and duties
" remain distinct as before. There is a union of interest
" and property, but not of personal or legal identity."
Citing *Muller* vs. *Dows; Fornum* vs. *Blackstone Co.*, 1 Sum., 47; *Racine, &c., R. Co.* vs. *F. T. and L. Co.*, 49 Ills., 331; and *Bissel* vs. *R'y Co.*, 22 N. Y., 258.

To the same import is *State Treasurer* vs. *Auditor-General*, (46 Mich., 224.)

Judge Cooley delivered the opinion of the Court. The Michigan general railroad law, under which the consolidation in question had been effected, in quite an elaborate manner, pointed out the details of consolidation. Among other things, it was enacted that the corporations, upon adopting agreements of consolidation, " shall be merged in the new " corporation provided for in such agreement, to be known " by the corporate name therein mentioned."

The Court say: " The argument on the part of the re-
" lator is, that when the consolidation of 1869 took place
" the Michigan Southern and Northern Indiana Rail-
" road Company, and the other companies in Ohio, Penn-
" sylvania, and New York, with which it consolidated,
" ceased to exist, and that the new company which suc-
" ceeded to their corporate powers came into existence as a
" corporation in this State by virtue of the authority to con-
" solidate which was given by the general railroad law then
" in force. * * * Had all the consolidated companies
" been corporations of this State, possessing like powers,
" privileges, and immunities, and had they provided to con-
" solidate under the act of 1873, there would be little or no
" difficulty in saying that they thereby ceased to exist.
" * * * There is no difficulty here, for each incorporation
" is effectual by an exercise of the same sovereign authority.

" But how can it be said that the Lake Shore and Michi-
" gan Southern Railroad Company, owning and operating a

" line of railway in six States, and exercising within them " corporate powers emanating from them all, is a corpora- " tion 'formed under' the general railroad law of Michigan? " Why under the law of Michigan any more than under " that of Ohio or that of any other State?"

Having thus established the rule, that exemption from taxation is not forfeited by consolidation, we come to examine the apparent exceptions. They are readily classified under three heads: 1. Where the act, under which the consolidation is consummated, is construed as a new grant; 2. Where the consolidation is the result of a purchase and sale, the exception holding good if it is a judicial sale; and, 3. Where there is a violation of the charter-contract by the corporation.

The distinction is this: Where corporations are *consolidated*, (in the sense and use of that term for which we have been contending,) the owners of the consolidating companies became, by reason of such ownership, and to the full extent thereof, owners in the resulting Company. Whatever privileges and immunities they had in the old companies they carry into the new, but only to the extent of the property held under their respective charters. The immunity is to certain persons with reference to certain things. The law says they may enjoy these same immunities with reference to these same things under the changed circumstances of a new name and a new Board of Directors. But where the consolidation results in the surrender of the old charters and the creation of a new company under a law which allows no such exemptions, then the provisions of the latter law wholly control. Nothing is carried into the new organization by transmission. The old contracts are not violated; they are surrendered, and a new contract made. It is equivalent to a new grant and a new acceptance. Again, where the rights and property of a corporation are sold, the

relation of the original owners to the thing owned is terminated. Clearly, exemption from taxation could not pass by a sale of any kind. And, third, where the corporation, by its own acts, puts it beyond its power to comply with the terms of the contract, the State would, of course, be released.

The cases cited by counsel for the defendant in error come under one or the other of the exceptions mentioned. Apparently those principally relied on are *Shields* vs. *Ohio*, (95 U. S., 319,) and *Railroad Company* vs. *Maine*, (96 U. S., 499.)

In the former case the charter-act (March 2, 1846) of one of the consolidating companies gave it the right to charge such tolls for the transportation of freight and passengers as it might deem reasonable, but gave no right of consolidation. This Company consolidated June 15, 1853, with another, under a general act authorizing consolidations, approved March 3, 1851. But on the first of September, 1851, (two years before the consolidation,) Ohio adopted a new constitution providing that no special privileges should be granted but what might be altered, revoked, or repealed by the General Assembly, and that corporations might be formed under general laws, but such laws should be subject to alteration and repeal.

The Company created by the consolidation of 1853 consolidated with a company outside the State in April, 1869. This latter consolidation was under a general law, authorizing such consolidations, approved April 10, 1856. This was the Company which sought the benefit of the exemption provided in the charter of 1846. There had been two consolidations, neither of which was provided for by the original charters, but both of which had been consummated under general laws, and after the adoption of the constitutional limitations.

The Court held that the Company resulting from the last consolidation was a new organization, deriving its powers and faculties wholly from the acts authorizing such consolidation. In the explicit language of the decision: "It did "not acquire anything by mere transmission. It took every- "thing by creation and grant."

In all this there is nothing contradictory to the doctrine laid down in *Cent. R.R. & B. Co.* vs. *Georgia*, or in *C. & O. R.R. Co.* vs. *Virginia*. The Court has simply found that it was the legislative intent that the companies consolidating under the general acts surrendered their charters and legal existence, and the Company resulting from such consolidation found its reason for existence wholly within the acts authorizing the consolidation. These acts being limited by the constitution, the right remained in the State to alter or amend them. Even under the facts of this case, Justices Field and Strong dissented from the conclusion of the Court, the latter holding that it "took away the property "of the Company without compensation as much as would "be taking away its lands."

In the case of *Railroad Co.* vs. *Maine* there is no question but the consolidations were made under acts passed by the Legislature long after the charter-acts. Two companies, incorporated in 1845, and having certain immunities from taxation, consolidated in 1862. This consolidated company again consolidated in 1874 with three other companies, only one of which claimed any exemption. The first consolidation was under an act of the Legislature of 1856, and the second under an act of 1873. These latter acts provided specifically that the consolidation should *constitute a new corporation*, and the old companies lose their corporate existence, except, when necessary to protect creditors and mortgagees, they should be so far restored from suspended animation, and for such length of time as was necessary to that

end alone. The original contract between the State and the companies gave them no right to unite in any way with other companies.

The controlling facts in this case, and those on which the decision is based, are that the immunity from taxation granted the original companies was coupled with the duty imposed upon their officers to keep regular accounts of their disbursements, expenditures, and receipts, in books which were to be open at all times to the inspection of the officers of the State, and that their respective treasurers should, each year, make a sworn exhibit to the Legislature of the net profits derived from the income of the road; that the companies voluntarily consolidated and formed a new company, whose officers were not chargeable with, and could not perform, the duties thus abandoned by the officers of the originally chartered companies.

The Court expressly says that "the conditions upon which "the limitation of taxation was prescribed could be per- "formed only while the companies were distinct corpora- "tions operating separate lines. *Those companies only* "were required to keep an account of their disbursements, "expenditures, and receipts, for the inspection of the Gov- "ernor and Council and committees of the Legislature. "*Their Treasurers only* were bound to render to the Legis- "lature, at the expiration of every year, exhibits under "oath of the net profits of their roads. *Their Directors* "*only* were called upon to make a special report to the "Legislature whenever their annual income amounted to ten "per cent. upon the cost and expenses of their roads. It "was only upon *such report* that the Legislature was to de- "termine the portion of the income which should be received "in lieu of other taxes. The new Company was subject to "no such duty of keeping an account of the expenditures "and receipts of the original lines; its Directors were not

" called upon to make any report as to the income of such " lines; nor was its Treasurer required to make an annual " exhibit of the net profits derived from them." * * * *

" Having thus disabled themselves from a compliance " with the conditions, upon the performance of which the " amount to be paid as a tax to the State could be ascer- " tained, they must be considered as having waived the ex- " emption *dependent upon such performance.* Their exemp- " tion was qualified by their duties, *and dependent upon* " *them.*"

It is distinctly held that the decision is not in conflict with the previous decisions in *The Delaware Railroad Tax*, (18 Wall., 206;) *Central R.R. & Banking Co.* vs. *Georgia*, (92 U. S., 665,) and *Chesapeake and Ohio R.R. Co.* vs. *Virginia*, (94 U. S., 718.)

" In none of these cases (says the Court) were duties re- " quired of the original companies and their directors and " officers, which could not have been equally discharged by " the new companies, nor was the extent or mode of taxa- " tion made dependent upon information to be imparted by " officers, who, upon the consolidation of the companies, had " ceased to exist."

" * * * The provision in the act authorizing the con- " solidation that the new Company should have all the " powers, privileges, and immunities of the old companies " must, therefore, be taken with the qualification that it " should have them so far as they could be exercised and " enjoyed by it with its different officers and distinct con- " stitution. Where their exercise or enjoyment required " other officers or a different constitution, the grant was to " that extent necessarily inoperative."

The distinctions between these two cases and the one at bar are obvious. In the *Shields* case the charter-act made no provision for uniting with other roads. The consolidation was under the law of 1851, which was subject to the

constitutional inhibition, and which operated as creating a new company with a new grant; thus within the first exception to the rule. The *Maine* case falls within the first and third exceptions. The consolidation under the general laws of 1856 and 1873 was found to have created a new corporation, and a violation, to a certain extent, by the old companies, of their contract with the State.

The Cairo and Fulton charter *did* make provision for consolidation, but none for accounting to the State. Its consolidation was in no way an abandonment or violation of its legal duties. The Maine companies were to be taxed on their annual net income, and it was necessary that returns to the State of their financial condition should be made annually. The Cairo and Fulton Co. was only to be taxed upon its road and appurtenances when it paid ten per cent. on cost of building and equipping. For this purpose annual returns were not necessary, and were not required. It is true that the Court below, in its opinion, says that an accounting between the Company and the State was implied in the section relating to taxes. This is far-fetched. If necessary to the exercise of the power of taxation the Assembly would not have left a duty of a railroad corporation to be expressed solely by implication. All the State needed in order to exercise its reserved right of taxation was to know that the road had paid ten per cent. per annum. Whenever that occurred it could learn it by inquiry of the proper officers. With the charter silent as to any duty of the Company in that regard, the State for thirty years refrained from making any inquiry or passing any law requiring the Company to report. Can it now be heard to claim that because the Company omitted to comply with what the Court is pleased to term an *implied* obligation that it thereby has forfeited its immunity from taxation?

The attempt to show that the operation of the Arkansas portion of the line in connection with that part lying in Missouri under the "one Board of Directors" was such an intermingling of assets, &c., as to bring this within the decision of the *Maine* case, is equally futile. The claim is that the new Company would be unable to show from their books and accounts when the Arkansas portion of the line paid ten per cent., &c. The fact remains that the new Company did make the required showing. To say that, under the circumstances, it is difficult to make an *accurate* statement, is begging the question. It would have been difficult for the Cairo and Fulton to have made an accurate statement, had it never consolidated. Or, suppose it had consolidated explicitly for the purpose of facilitating early construction, and before the adoption of the constitution of 1868. It is admitted that in that event the consolidation would not have destroyed the exemption from taxation, yet the assets of the two roads would have been intermingled as they are now, and there would have been the same difficulty of ascertaining when the Cairo and Fulton portion paid ten per cent. In *Branch* vs. *City of Charleston*, *supra*, this Court directly recognized that a consolidation resulting in the new Company holding part of its property exempt from taxation, while the balance was subject to being taxed, might raise embarrassing questions, but does not intimate that as a reason why the exemption should be terminated.

Mr. Justice Field, in the *Maine* case, clearly makes the distinction between that and the case at bar, where he refers to the cases of *The Delaware R.R. Tax; Cent. R.R., &c., Co.* vs. *Ga.;* and *C. & O. R.R. Co.* vs. *Virginia*. He says:

"In none of these cases were duties required of the "original companies and their directors and officers, which "could not have been equally discharged by the new com- "panies."

In *Tomlinson* vs. *Branch* one of the consolidating Companies was exempt from taxes on all its property until the dividends exceeded lawful interest.

In *Cent. R.R., &c., Co.* vs. *Ga.* one of the Companies was to be taxed only at the rate of one-half per cent. on its annual income.

In *S. W. R.R. Co.* vs. *Ga.* one of the Companies had the same exemption.

In *C. & O. R.R. Co* vs. *Va.* one of the consolidating Companies was to pay no tax until its profits amounted to ten per cent. a year on its capital stock.

In each of these cases it was held that the immunity from taxation continued in the new Company to the extent granted in the original charter, yet in every case the consolidated line was operated as a single road, with continuous trains, &c.

The case of the *Louisville & Nashville R.R. Co.* vs. *Palmes*, (109 U. S., 244,) also relied on by defendants in error, comes under the second exception to the rule. This was a consolidation resulting from the purchase, under sale on foreclosure of mortgage, of the property, &c., of one corporation by another. The mortgagor was entitled to certain exemption from taxation. The Court holds that from the language of the statute the exemption was a "privilege per-"sonal to the corporation or to the individuals connected "with it," therefore did not pass by the sale.

III.

Has the road in Arkansas ever paid ten per cent. per annum?

The Chancellor of the County Court, where this suit was commenced, finds that the fund on which the interest was to be paid is the capital stock of the Company, and such

capital stock "was the cost of construction and equipment "of the road ready for operation." This he finds to have been $7,712,500, and the net income in 1882 to have been $1,312,612.26—more than ten per cent. of said capital stock.

The Supreme Court of the State refers to this finding of the Chancellor, but declares that it is unnecessary to go into the question, and adds: "In the very nature of things it is "impossible to do more than guess at it."

The record does not warrant the conclusion reached by either of these Courts. The proofs, with reference to the cost of construction and the income from operating the road, are all found within the depositions of Warner, Barlow, and Hughes.

Chas. G. Warner, who is the general auditor of the plaintiff Company, having the custody of its books and accounts, testifies that on the first of May, 1874, the main line had cost $23,157,000.62. He ascertains the expenditure for work done on the main line after May 1, 1874, and for constructing the various branches, to be $3,060,302.49—making a total for construction of $26,217,303.11.

The only other evidence bearing upon cost of construction is the deposition of Geo. W. Hughes, a witness of the defendant.

He is a civil engineer. He assisted in the preliminary survey of the main line, and was in charge, for a time, of the construction of 43 miles of the same. Twenty miles of this 43 was afterwards turned over to another party. He says that at one time he made an estimate of the cost of constructing the entire road, but had forgotten what his estimate was. He thinks the cost of construction would not be over $20,000 per mile. In this estimate he says he does not include the Arkansas river bridge, nor the ballasting of the road, nor the rolling-stock, nor certain iron bridges that have been built to replace wooden ones, nor the stone piers now placed

under the bridges, nor of additional side tracks and station-houses. He explicitly states that he does not know how much rolling-stock was put on the road when it was first put in operation, and that he has had no experience in the transportation department of railroads. He, however, undertakes to "estimate the total cost of the road as follows:

"305 miles roadway, including station-houses, " side tracks, tanks, &c., at $20,000 per " mile.....	$6,100,000
" Difference in iron bridges and masonry and " the wooden structures first built, say....	305,000
" Rolling-stock when road was first operated.	1,067,500
" 200 miles of ballast at, say, $1,200.....	240,000
"Total.....	$7,712,500"

This estimate was evidently made on the basis of prices existing at the time the deposition was made. The witness was careful to explain on this point. He says: "At the " time the Cairo and Fulton road was built it was just pre- " vious to the panic of 1873; prices were inflated; gold " was at a premium; common R.R. laborers commanded " $2.25 per day; now they get $1.50 for the same work. " Railroad iron was also as much higher in proportion as " the labor."

He then proceeds to say that, "leaving out the Arkansas "river bridge, which, I understand, was not a part of the " road, the cost *would be* near $20,000 per mile, including " every expense; I don't think it *would be* over $20,000."

Warner, the auditor, who alone testifies on this point, gives the net income from the main line and branches, *applicable to payment of dividends*, for the year 1882, as $576,445.55.

Rec., 45.

The income for 1882, without deducting either the deficiency for 1881 or the matured interest for the year, or the floating indebtedness, aggregated $1,733,966, which was derived as follows: from the main line, $1,312,612.26; from the branches, $421,353.74.

Rec., 48.

In the table given by the witness, on pages 51 and 52, it will be seen that the deficiency for 1881 was $617,517.79. This he deducts from the aggregate of $1,733,966, leaving $1,116,448.21, which is given as the "clear net income ap- "plicable to payment of 1882 *coupons*, *indebtedness*, and "*dividends*." By deducting the coupon indebtedness leaves the amount given above, ($576,445.55,) which is far less than ten per cent. of cost of construction.

S. D. Barlow, who had been an officer of the complainant for ten years, and from May, 1874, had kept the stock-books, testified that the amount of the capital stock of the Cairo and Fulton Company, as represented in the St. Louis, Iron Mountain and Southern Company at the time of the consolidation, was $12,000,000, and that that part of complainant's road situated in Arkansas had never paid a dividend or interest on the capital stock, or on the amount expended in building and equipping it.

Rec., 48, 49.

It is only in the year 1882 that the State claims the dividends were not less than ten per cent. The sole proof as to the income for that year applicable to dividends fixes the amount at $576,445.55. This stands without contradiction. Cost of construction is fixed at two different sums by two witnesses. Mr. Hughes makes it $7,712,500; Mr. Warner at $26,217,303.11. Accept Mr. Hughes' estimate as correct, still the net income would not amount to ten per cent. Besides, the income applicable to dividends is from the main

line *and the branches*, while Hughes' estimate of cost of construction is only of the main line. He calculates for 305 miles of road, at $20,000 per mile. Add to his estimate 158 miles, (branches,) at same rate, and we have, to be added to his estimated cost of construction, $3,160,000. This, added to the amount found by him for constructing the main line, gives $10,872,500.

The Chancellor of the County Court, who alone has passed upon this point, utterly discarded the evidence of Warner as to cost of construction, and accepted the stumbling, uncertain estimate of Hughes. Then as to the net income he takes a detached statement from the deposition of Warner, found on page 48 of the Record, (in folio 89,) where the witness says, in answer to a cross-interrogatory, "net income main line, $1,312,612.26."

The witness testified in his direct examination, page 45, (folio 82), that the net income in Arkansas for this same year, *which was applicable to dividends*, was $576,445.55. By referring again to page 48, it will be seen that the witness also states there that the *net income* from the branches was $421,353.74. This sum added to amount given as net income of main line makes $1,733,966. Now, by turning to the table on page 51, which Warner made a part of his deposition, this same sum will be found given as the "net "income applicable to payment of *previous deficit, coupon* "*indebtedness*, and dividend." What then did the witness mean by saying on page 48 "net income main line?" Only what is said in the table, namely, that it was the net income applicable to payment of deficit, coupon indebtedness, and dividend. Deducting deficit and interest account left the amount first stated by him on page 45 as applicable to dividends $576,445.55.

But if the testimony of Warner and Barlow as to cost of construction is to go for naught, then, as to amount of

income, we have no evidence whatever, and as to cost of construction have only the guess of Hughes.

Counsel for defendants contend that the testimony of the witnesses for the complainant was inadmissible. However, they use the testimony of Warner as to amount of income. It is the only evidence on that point in the case. They are compelled to use it or admit there is no proof. If the Court is not apprised of the income it certainly can make no finding as to the ten per cent. Warner and Barlow must be held as competent witnesses to prove both cost of construction and amount of income or their evidence must be held as inadmissible on both points. If admissible, it appears conclusively that the road, &c., has never paid an interest of ten per cent.; if inadmissible, then there is no proof on the point and there can be no finding.

This is the first time the State has ever called on the corporation, which it exempted from taxation in 1853, for a balance sheet or a statement of its affairs.

In its law granting the exemption, the State did not provide any rule by which the ten per cent. taxing point could be ascertained.

The corporation, which was once the pet of the State, might well expect that if the State required any better method of finding out when ten per cent. had been earned than the books of the corporation, the State would make known her sovereign pleasure by some appropriate enactment.

Instead of this she has sprung at the throat of the corporation by a sweeping provision in her revenue law of 1883 to the effect that this corporation *shall be taxable*, notwithstanding any charter exemption. This of course puts the corporation on trial for its very life. For such a provision could not be carried out, except on the theory that the old

Cairo and Fulton Company, with all its rights, privileges, and immunities, is *defunct*. Upon this proposition must fall either the iconoclastic law, or the vested contract rights of the corporation.

We think we have established beyond controversy that the charter-rights still exist unimpaired, and that the road has not paid ten per cent. per annum.

The State, through her Courts, compels individuals to stand by and perform their contracts. We only ask the State to do the same.

J. H. McGOWAN,
A. T BRITTON,
A. B. BROWNE,
Att'ys for Pl'ff in Error.

JOHN F. DILLON,
of Counsel.

IN THE

Supreme Court of the United States.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, *Plaintiff in Error.*

v.

JAMES H. BERRY, *Governor;* JACOB FROLICH, *Secretary of State,* and A. W. FILES, *Auditor, as the Board of Railroad Commissioners of the State,* and JACOB FROLICH, as *Secretary of State, Defendants in Error.*

ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR DEFENDANTS IN ERROR.

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ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR DEFENDANTS IN ERROR.

This suit was brought for the purpose of injoining the Board of Railroad Commissioners from assessing the road of the plaintiff for taxation. The plaintiff claims that the road is exempt. The grounds of the controversy may be briefly stated.

The Cairo and Fulton Railroad Company was incorporated by a statute of Arkansas, approved January 12, 1853.

A section of the act reads as follows:

"Section 10. Said incorporation shall have power to unite their road with the southern end of the Missouri road at some suitable point on the line which divides these two States, and its southern end with any road coming in from Texas, at such point on the boundary line which divides that State and Arkansas that may be deemed most eligible, and to make any contract or agreement with any other railroad company in reference to their business that may best insure the early construction of said road, and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs, if it should be found necessary to facilitate the early construction of their said road; the contract or agreement of their respective boards shall form a part of their respective charters, whenever the same may be entered into, and recorded with their charters." *Acts 1852, p. 180.*

Section 13 of the charter reads as follows:

"This act shall be deemed a public act, and shall be favorably construed for all the purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage; *provided*, that all the rights, privileges, immunities and franchises contained in the charter granted at this session of the Legislature of this State to 'The Mississippi Valley Railroad Company,' and not restricting or inconsistent with this act, are hereby extended to and shall form a part of this incorporation as fully as if the same was inserted herein."

Section 11 of the charter reads as follows:

"That the capital stock and dividends of said company shall be forever exempt from taxation; the road, fixtures and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum."

The fourth section provides that "the capital stock of said incorporation shall be one million five hundred thousand dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road."

Section 25 of the charter of the "Mississippi Valley Railroad Company" reads as follows:

"The capital stock of said company, with all the immunities and franchises herein specified, and all the machines, cars, engines, or carriages, belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares. And the capital stock of said company and the dividends shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock, and the road, with all its fixtures and appurtenances, including workshops, warehouses and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures, which will reduce the dividends below ten per

cent. per annum. Said stockholders shall not be bound or liable for any greater amount than the respective shares of stock which they or either of them own."

The charter of the Mississippi Valley Railroad Company was approved on the same day with that of the Cairo and Fulton Railroad Company. *See Acts of Arkansas, 1852, p. 181.*

It is under these provisions that the defendant claims exemption from taxation.

The complaint states that plaintiff's road was completed on the fifth day of December, 1873. (*Tr., p. 6.*) Also, that under the ninth section of its charter it consolidated with the St. Louis and Iron Mountain Railroad Company, a corporation organized and created under the laws of Missouri, whose road connected with the said Cairo and Fulton Railroad at the line between said States, and assumed the corporate name of the St. Louis, Iron Mountain and Southern Railway Company, and on said day filed articles of consolidation in the office of the Secretary of State." A copy of the articles of consolidation is made exhibit A to the complaint. (Rec. 14.)

Referring to this exhibit we find that the agreement of consolidation is dated April 30, 1874 (Rec. 7,) and that it was filed in the office of the Secretary of State on the second day of June, 1874. (Rec. 14.)

The answer is as follows:

"I. That the consolidation mentioned in the complaint was effected after the completion of said Cairo and Fulton

Railroad, and was had in virtue of the forty-third section of an act of the General Assembly of the State of Arkansas, entitled 'An act to provide for a general system of railroad incorporation,'" approved July 23, 1868.

"II. Said capital stock of said Cairo and Fulton Railroad Company has paid an interest of ten per cent. per annum, and said road has paid a like interest." (Rec. 72.)

The plaintiff took the deposition of Charles G. Warner, its auditor, and Stephen D. Barlow, its assistant secretary, as to the cost and income of the road. To these we shall refer presently.

It was agreed of record (Rec. 104) that on the eleventh day of March, 1874, the St. Louis and Iron Mountain Railroad Company, and the Cairo, Arkansas and Texas Railroad Company, two corporations created by the laws of Missouri, were consolidated in accordance with the laws of that State by mutual consent. The Missouri statute authorizing this consolidation appears in the transcript. (Rec. 121.) Also, it was agreed that that the consolidated company thus formed was consolidated with the Cairo and Fulton Railroad Company, forming the plaintiff company; and that immediately after that event the plaintiff prepared and published a printed pamphlet containing, first, section 43 of "An act to provide for a general system of railroad incorporation," approved July 23, 1868, and which reads as follows:

"Sec. 43. Any railroad company now chartered under existing laws, or which may hereafter become incorporated under this law, shall have power and authority to purchase

and hold any connecting railroad and operate the same, or to consolidate their companies and make one company under the name of one, or both, or any other name; but when such purchase is made, or consolidation is effected, the said company shall have and be entitled to all the benefits, rights, franchises, lands and tenements, and property of every description belonging to such road or roads so sold or consolidated; and shall be liable to all the pains and penalties imposed by their respective charters."

Regarding the whole case we submit the following propositions:

I.

The exemption clause of the act incorporating the Cairo and Fulton Railroad Company is to receive a strict construction.

"It is manifest that legislation which it is claimed relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms * * * If, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the State. In other words, the language must be of such a character as, fairly interpreted, leaves no room for controversy." *Bailey v. McGuire, 22 Wall., 226.*

"It is never for the interest of the State to surrender

the power of taxation, and an intention to do so will not be imputed to it unless the language employed leaves no other alternative." *Ib.*

Taking this familiar and well-established rule for a guide, the present case presents no difficulty whatever.

But it is argued that this rule is suspended by the thirtieth section of the charter, which provides that it shall be *liberally* construed "for the objects therein set forth." But the rule of strict construction universally applied to exemptions from taxation demands that this provision shall be limited in its operation to the powers granted to the corporation. It cannot be supposed that the Legislature intended any laxity of construction in a matter so vital to the public interest as that of taxation.

The argument which would exclude the exemption clause from the test of strict construction, was much urged on the court in *St. Louis Railroad Company v. Loftin, 30 Ark. 711*, but the court, failing to see its correctness, said:

"It is a settled rule that no presumption in favor of exemption of property from taxation can be indulged. The exemption must be made upon a sufficient consideration and be clearly shown to exist, and no presumption can be indulged in its favor."

On writ of error the same point was made in argument before this Court, but unprevailingly. This court said:

"Exemptions from taxation are *never* presumed. On the contrary the presumptions are *always* the other way;

and, as in this case, the capital stock is alone exempt, the property of the company is not to be included in the exemption, unless it manifestly represents the stock, within the meaning of that term as used by the Legislature in the particular act to be construed."

Railway Company v. Loftin, 94 U S. 564.

That the exemption clause in this case is to be construed with the usual strictness in such matters is therefore settled.

II.

The reference in the charter to that of the Mississippi Valley Railroad Company does not help the plaintiff.

The rule as to the coustruction of what is called "a reference statute," is laid down in *King v. Justices of Surrey, 2 Term R., 510*, where Ashurst, J., said:

"But it has been argued that the general clause of reference in 25 Geo., 3, adopts all former laws of excise, and therefore, inasmuch as some former laws gave the power of appeal and mitigation, they are virtually included in this. But I think that this argument in its utmost extent will not hold. For it may as well be argued that as this clause of reference virtually incorporates all former excise laws, as to the mode of levying, etc., and there are some of these acts which in terms negative the appeal, these laws are virtually incorporated, and therefore that the appeal is virtually negatived in this. The fair construction to be put upon this act of 25 Geo. 3, C. 72, S. 34, which is the clause of reference in question, seems to be this: That all

the general powers and provisions given and made in acts in *pari materia* shall be virtually incorporated into this, but that such provisions as are always considered as special provisions shall not. The power of appealing from the judgment ot the justices seems to be of this kind, and does not attach without being expressly given. This construction will prevent all the clashing and inconsistence which will occur if a different construction were to take place."

In *St. Louis R. R. Co. v. Loftin, 30 Ark., 711*, the reference clause is mentioned; but the court decided the case exclusively on the provisions of the charter of the Cairo and Fulton Railroad Company.

This Court said:

"The twenty-fifth section of the Mississippi Valley charter, even if it was incorporated with that of the Cairo and Fulton Company, *of which there may be doubt*, does not materially change the effect of the eleventh section."

Railway Company v. Loftin 94 U. S. 563.

As we have seen, if there is a doubt it must be solved against the company.

This Court did not find it needful to pass on this question except as above. But, when it is examined there can be no doubt.

Of course, wherever any subject is fully covered by the charter of the Cairo and Fulton Railroad, the reference to the charter of the Mississippi Valley Railroad must be nugatory. For example: The charter of the Cairo and

Fulton Railroad Company authorizes the building of a railroad on one line, and that of the Mississippi Valley Railroad Company authorizes the building of a road on another line. Now the reference clause does not authorize the Cairo and Fulton Railroad to build a road over the line of the Mississippi Valley Railroad Company. Again, by the charter of the Cairo and Fulton Railroad Company the board of directors must consist of *not less than* thirteen persons; but by the other charter the board of directors must consist of exactly thirteen directors.

Obviously, where a point is covered by the charter of the Cairo and Fulton Company the reference clause can not have the effect to change its special provisions. As the two clauses relating to exemptions are quite distinct and inconsistent, the court must either adopt this view, or else hold that by the reference clause the statute referred to is made paramount; so that the reference clause will have the effect to abrogate a large part of the statute in which it is found.

By the Charter of the Cairo and Fulton Railroad Company "all the rights, privileges, immunities and franchises contained in the charter of" * * "the Mississippi Valley Railroad Company, and *not restricting or inconsistent* with this act, are hereby extended to and shall form a part of this incorporation as fully as if the same was inserted herein."

What is the meaning of the words "not restricting or inconsistent," thus used? The plaintiff in error claims that they mean in effect not incompatible with the privi-

leges and immmunities granted to the Cairo and Fulton Railroad Company. But that is not what the act says. It says "not restricting or inconsistent with *this act*." The obvious purpose was to prevent the application of the dorvisions of the second charter to the Cairo and Fulton Railroad Company where they related to any subject-matter covered by the first charter; this being absolutely necessary in order to prevent the most hopeless confusion.

It will be seen that the provisions as to exemptions in the two charters are fundamentally different.

By the first charter, that of the Cairo and Fulton Railroad Company, the capital stock and dividends are forever exempt from taxation.

By the second charter the capital stock is exempt until a dividend of six per cent. is realized.

By the first charter the road is exempt from taxation until it pays an interest of not less than ten per cent. per annum.

By the second charter the road is exempted from taxation for the period of twenty-five years from the completion of the road; and it is further provided that no tax shall ever be levied on the road or its fixtures which will reduce the dividends below ten per cent. per annum.

What was the reason of this difference? Clearly it was because the legislature conceived that the Mississippi Valley Railroad Company would be engaged in an enterprise less promising than that of the Cairo and Fulton Rail-

road Company; and therefore in an enterprise requiring more of the fostering care and assistance of the State. The result has shown that this view was just. The Cairo and Fulton Railroad has long since been built; but the other road, with its larger exemptions, has never even been begun, although more than thirty years have elapsed since its charter was passed.

It is very plain that if the Legislature had meant that the exemptions should be the same in both cases, they would either have used the same or similar language in both charters. By using language having a different meaning in the two acts, the Legislature indicated in the only way in which it could do so, that it meant that a difference in actual results was intended. So obvious is this, that in rendering the opinion in *St. Louis Railway Company v. Loftin*, *ubi sup.*, the Supreme Court of Arkansas cited the reference clause in the charter of the Cairo and Fulton Railroad Company, but passed over the question here presented in silence, although the company then urged the same argument that it urges now.

III.

We assert as a clear proposition that there is nothing in the charter of the Cairo and Fulton Railroad Company authorizing it to consolidate with any other road. If it had been intended to grant such a priviledge doubtless the act would have said so. Nothing would have been easier, simpler or more natural. But the word "consolidate" is not found in the charter. It is avoided with elaborate

care. Perhaps it has no synonym in the language. The words used in the charter show a purpose to avoid any equivalent.

There was an overruling necessity for a refusal to grant a power to consolidate. By the eleventh section of the charter the road was to be taxable whenever it should pay "ten per cent. per annum." In order to ascertain when the road was paying ten per cent. it would be necessary for the accounts of the road to be kept separately. To say that the Legislature meant to authorize a consolidation with another company in a different State, making them both one company, with one set of books and one set of accounts, would be to say that the Legislature in one section of the act contemplated an inquiry as to the earnings of the corporation, and by another section of the same act conceded a privilege which, if acted upon, would render such an inquiry hopeless. That would convict the supreme power of absurdity.

Taxes are the life blood of the State. Without them law would cease to exist and society would be disbanded. An exemption from a tax is the precise equivalent of an appropriation from the treasury of an equal amount; an annual appropriation in this instance of nearly, if not quite, a hundred thousand dollars. Surely no one would contend for a statutory appropriation upon the hazardous inferences which make up the case of the plaintiff.

It will be said, no doubt, that the result of the proceeding authorized by the tenth section would be a virtual

consolidation. But this can not be held without doing violence to the language of the statute. Upon a very little reflection this must be obvious. By a consolidation the consolidating companies are wholly extinguished and a new corporation is created.

McMahan v. Morrison, 16 Ind., 172.

The consolidation amounts to a "surrender of the old charters by the consolidating companies, the acceptance thereof by the Legislature, and the formation of a new corporation out of such portions of the old as enter into the new."

Lauman v. Lebanon R. Co., 40 Penn., St. 42.

That was not authorized by the section referred to which gave the Cairo and Fulton Railroad Company power "to make joint stock with any other railroad in this or any other State, and to form one board of directors for the management of *their* (not *its*) affairs."

It is not an unusual thing for one board of directors to manage the affairs of two railroad companies. That is done in every case where one company leases the road of another. It is no very uncommon thing for two companies having a community of interests to make their stock joint, for the purpose of having a common participation in profits or dividends. These are mere business arrangements for the purpose of creating unity and harmony of action in the promotion of a common object. They do not in any sense extinguish the corporations which enter upon them; nor do they create any new corporation; and this

power of simplifying the business of different companies created by the laws of different States, is what is conceded in the charter in question, and nothing more. If it had been the intention of the Legislature to authorize a consolidation it surely would have said so. The language used is perfectly intelligible, and it cannot have the interpretation claimed by the plaintiff without giving to it an exemption that will last forever. It is impossible to suppose that such an extraordinary result was within the legislative intent. The second section of the charter conferred on the company authority "to branch and extend their said road to any other point or points in the State." This would, according to the plaintiff's contention, give it the right to build all the roads ever to be built in the State, all to be exempt from taxation. Then, by its consolidation with Missouri companies, it has put it out of the power of the State to ever have any account with the Cairo and Fulton Railroad Company. Moreover, the road was to be exempt until "it" (*i. e.*, the Cairo and Fulton Railroad Company) "pays an interest of not less than ten per cent. per annum." As that company has ceased to exist, by reason of the consolidation, evidently it will never pay any interest at all. So that any way we look at the matter the road is perpetually exempt, provided that the plaintiff's suit has anything to rest upon. An argument that leads to such extraordinary results needs revision. It can not stand the test of any known rule of construction.

The plaintiff well knew at the time of the consolidation that its charter conferred no such power, for in its

published proceedings it printed section forty-three of the act entitled "An act to provide for a general system of rr''road incorporation," approved July 23, 1868, as a source of authority for its action. Why was this done if its own charter supplied the power to effect a consolidation?

In other respects the plaintiff then abandoned the charter of the defunct Cairo and Fulton Railroad Company, and sought shelter under the general railroad laws of the State. Thus the charter of the Cairo and Fulton Railroad provided that four of the board of directors should be chosen every year. (Section 5.) But the plaintiff's organization, based upon the general railroad law, requires all of the directors to be elected annually. By-laws, Art. 2 and 3, (Rec. 110.)

The 43d section of the act of July 23, 1868, above cited, did give power to make the consolidation by which the plaintiff came into being, and the consolidation was avowedly in accordance with its terms. There was no other authority for taking that step to be found upon the statute book.

IV.

Even conceding for the sake of argument that the tenth section of the charter conferred authority for the consolidation, it is perfectly obvious that it contained no authority for the consolidation *at the time at which it actually took place.*

The language of the charter already cited is as fol

lows: * * * "And to make any contract or agreement with any other railroad company in reference to their business, that may best insure the early construction of said road and its successful management, and also to make joint stock with any other railroad company in this or any other State, and to form one board of directors for the management of their affairs, *if it should be found necessary to facilitate the early construction of their said road.*"

Obviously, if the power was to be exercised it could only be with the view of facilitating "the early completion" of the road. Nothing can be plainer. The bill says the road was completed on the fifth day of December, 1873. It would be a remarkable construction that would hold that a power expressly limited to the period during which the road was in process of construction, would last forever. Or, rather, it would be no result of construction whatever, but would be judicial legislation for the purpose of granting an exemption from taxation not to be found in the statute. The argument in favor of such a conclusion is clearly destitute of plausibility.

V.

As there was no authority for the consolidation save the act of July 23, 1868, it follows as night to day that the plaintiff's claim of exemption falls for want of support. Before the passage of that act the constitution of 1868 had been adopted, taking effect from April 1, 1868, and it contained the following provision:

"The General Assembly shall pass no act conferring corporate powers. Corporations may be formed under general laws, but all such laws may from time to time be altered or repealed."

Article 5, Section 8.

It also contained this provision:

"The General Assembly shall not grant to any citizen or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens."

Article 1, Section 18.

Also this provision:

"The property of corporations now existing or hereafter created, shall forever be subject to taxation the same as property of individuals."

Article 5, Section 48.

In point of fact, section forty-three of the act providing for a general system of railroad incorporation, of July 23, 1868, under which the consolidation was effected, did not exceed these constitutional limits, as it did not purport to exempt from taxation, or to give any exclusive privileges; but if it had done so it would have been so far void.

The consolidation of the Cairo and Fulton Railroad Company, occurring after the adoption of the Constitution of 1868, the latter had the effect to modify the charter of the consolidated company by incorporating in it all of the restrictions against special privileges and exemptions con-

tained in that Constitution, and by excluding from the charter the grant of all such restrictions and privileges. The consolidation, was, in effect, the same as if the Cairo and Fulton Railroad Company had surrendered its charter to the State, and had received a new one from the State of the date of the consolidation, which was the thirtieth day of April, 1874, while the Constitution of 1868 was in force; that this is a correct statement of a legal principle is beyond doubt.

Where the Legislature gives its consent to the consolidation of existing corporations, the effect is to dissolve the former corporations, and at the same instant to create a new corporation with property, liabilities and stockholders derived from the old, upon such terms and conditions as may be prescribed by the act of consolidation.

McMahan v. Morrison, 16 Ind., 172.

And the new consolidated corporation takes subject to the constitutional provisions in force at the time the consolidation takes effect.

State v. Sherman, 22 Ohio St., 411.
Central R. R. Co. v. State, 54 Ga., 402.
Atlantic R. R. Co. v. State, 55 Id., 312.
State v. Northern Central R. R. Co., 44 Ind., 165.
Shields v. Ohio, 26 Ohio St., 90.
State v. Atlanta R. R. Co., 60 Ga., 269.
Atlanta R. R. Co. v. State, 63 Id., 485.

It is said by the plaintiff that it can not be taxed without impairing the obligation of its contract with the State,

evidenced by its charter of 1853. The question thus presented is a federal one, the decision of which in the last instance adversely to the State, resides in this Court, which has already decided the question, and has expressed its decision in language that silences all debate.

We refer to *Shields v. Ohio, 95 U. S.,319*, a case no wise distinguishable in principle from that now before the court.

In that case the Junction Railroad Company was incorporated by act of March 2, 1846. The charter gave certain privileges with regard to fixing charg esfor fares of passengers. On the 7th of March, 1850, an act was passed authorizing the consolidation of the Junction Railroad Company, with the Toledo, Norwalk and Cleveland Railroad Company.

On the third of March, 1851, an act was passed allowing railroad companies generally to consolidate with other railroad companies. Section three of the act declared that "such new corporation shall possess all the powers, rights and franchises conferred upon such two or more corporations by the several acts incorporating the same."

Then came the new Constitution of the State, adopted September 1, 1851, which provided as follows: "No special privileges shall ever be granted, that may not be altered, revoked or repealed by the General Assembly." "The General Assembly shall pass no special act conferring corporate powers." "Corporations may be formed under

general laws, but such laws may from time to time be altered or repealed."

On the fifteenth day of June, 1853, the Junction Railroad Company consolidated with the Toledo, Norwalk and Cleveland Company.

The question arose as to whether the consolidated company possessed the privileges which had been granted by the General Assembly prior to the adoption of the new Constitution.

It will be seen that the case differed from the present in two respects.

1. The acts permitting the consolidation were passed before the adoption of the new Constitution.

2. The provisions of the new Constitution in Ohio were much less stringent than those of our Constitution of 1868.

Yet the Court held in that case that the privileges granted in the original charters, in so far as inconsistent with the provisions of the Constitution of 1851, had ceased to exist. The Court said:

"The Legislature had provided for the consolidation. In each case, before it took place, the original companies existed and were independent of each other. It could not occur without their consent. * * * The constitutional provision that no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the General Assembly, entered into the acts

under which the consolidations were made, and rendered the corporations created, and the franchises conferred, subject to repeal and alteration, just as if they had been expressly declared to be so by the act."

It is, therefore, as certain as anything can be made in law that the property of the St. Louis, Iron Mountain and Southern Railway Company has for nine years past been as much subject to taxation as that of any private citizen whatever.

The doctrine laid down in *Shields v. Ohio*, has been affirmed in *Railway Company v. Maine, 96 U. S., 499*, which is a still stronger case for us than *Shields v. Ohio*.

In that case a section of the charter of the railroad company provided a manner for assessing a tax against the company from reports of the earnings of the company to be made by its officers. After the consolidation no separate accounts were or could be kept as to the earnings of the original road. Before the act of consolidation, a general act had been passed providing that all acts of incorporation subsequently passed "should be liable to be amended, altered or repealed at the pleasure of the Legislature." This act was passed in 1831. The consolidation was effected under an act passed in 1856, which provided that the consolidated company should have "all the powers, privileges and immunities" possessed by the constituent companies. The Court held that the consolidated company was taxable. The reasons for this ruling appear by the following extract from the opinion :

The "provision in the charter of the two original companies was a clear conditional limitation on the part of the State to tax them. Language could not be made more direct and positive. Only upon the annual net income received from the roads of the companies above ten per cent. paid to the stockholders could a tax be imposed by the State, and then only a portion of said net income could be exacted. 'No other tax,' said the charter, should ever be levied or assessed on the corporations, or any of their priviliges or franchises. So long as these companies were distinct corporations, only the tax thus prescribed could be imposed upon them. But when they were merged in the new corporation, their distinct corporate existence ceased, except so far as their existence might be necessary to protect their creditors or mortgagees, or those of the new corporation. The condition upon which the limitations of taxation were prescribed could be performed only while the companies were distinct corporations operating separate lines. Those companies only were required to keep an account of their disbursements, expenditures and receipts, for the inspection of the Governor and council, and committees of the Legislature. Their treasurers only were bound to render to the Legislature, at the expiration of every year, exhibits under oath of the net profits of their roads. Their directors only were called upon to make special report to the Legislature, whenever their annual income amounted to ten per cent. upon the cost of their roads. It was only upon such report that the Legislature was to determine the portion of the income which

should be received in lieu of their taxes. The new company was subject to no such duty of keeping an account of the expenditures and receipts of the original lines; its directors were not called upon to make any report as to the income of such lines, nor was its treasurer required to make any annual exhibit of the net profits derived from them. The assets of all the companies were intermingled; and continuous trains were running over the whole length of the several roads. It would have been impossible to show what would have been the profits of each road without the consolidation. Only an approximation to them would have been attainable; and that would have been based upon estimates more or less speculative in their character.

"The consolidation of the original companies was a voluntary proceeding on their part. The law made it dependent upon their agreement, and that law was presumably passed upon their request, as they are named in it and they acted under it. Having thus disabled themselves from a compliance with the conditions, upon the performance of which the amount to be paid as a tax to the State could be ascertained, they must be considered as having waived the exemption dependent upon such performance. Their exemption was qualified by their duties, and dependent upon them. They incapacitated themselves from the performance of those duties by a proceeding which they supposed would give them greater advantages than their exemption. The new company was not charged with the duties which they were to perform to the State, and by which the State was to be governed in its taxation, nor was the State under

any obligation to accept a substituted performance from other parties.

"The provision in the act authorizing the consolidation that the new company should have all the powers, privileges and immunities of the old companies must, therefore, be taken with the qualification that it should have them so far as they could be exercised or enjoyed by it with its different officers and distinct constitution. Where their exercise or enjoyment required other officers or a different constitution, the grant was to that extent necessarily inoperative."

In this case it appears by the plaintiff's proofs that its officers can not now tell, save by an approximation, what the actual earnings of the Cairo and Fulton Railroad part of its road are. The present company has, by its own acts, incapacitated itself from showing, in any definite manner, the amount of the net earnings of the Arkansas road. Under these circumstances, even if the consolidation had taken place under the original charter, and before the road was completed, the consolidated company would have forfeited its claim to exemption; as was expressly held in the case last cited.

To the same effect, see Railroad Co. v. Georgia, 98 U. S., 359.

The case of *Louisville R. Co. v. Palmes, 109 U. S., 244*, merits special attention.

The Legislature of Florida, by act of January 6, 1855, exempted all railroad companies that should accept its pro-

visions from taxation for thirty-five years from the time of the completion of their respective roads.

By act of December 14, 1855, the Legislature specially extended this exemption to the Alabama and Florida Railroad Company, which completed its line of road about January 1, 1860.

The road was sold under foreclosure proceedings, and was bought in for the Pensacola and Louisville Railroad Company, another Florida corporation, August 7, 1872.

By an amendment to its charter of February 4, 1872, it was enacted that the Pensacola and Louisville Railroad Company should be entitled to the exemption of the Alabama and Florida Railroad Company for its unexpired period.

On May 6, 1878, the Pensacola and Louisville Railroad was sold under a decree of court, and was bought in by the Pensacola Railroad Company. This purchase was made under authority granted by a statute passed February 27, 1877. That act provided that upon making that purchase, "the said Pensacola Railroad Company shall be deemed in law and equity to be fully invested with and entitled to all the said property, rights, franchises, privileges and immunities of said Pensacola and Louisville Railroad Company, as though the same were granted to or acquired by the said Pensacola Railroad Company."

By the act of 1872, amending the charter of the Pensacola and Louisville Railroad Company, it was authorized "to purchase, lease, acquire an interest in, to unite or con-

solidate with, lease or sell to any other railroad company, in or out of the State, and to make the same one company, with a consolidated stock and property, and with one board of directors."

Under this authority the Pensacola Railroad Company conveyed to the Louisville and Nashville Railroad Company, a Kentucky corporation, authorized by its charter to make the purchase, all of its franchises (except the franchise to be and exist as a corporation,) rights, privileges, easements and immunities."

The court, reaffirming the principal laid down in *Morgan v. Louisiana, 93 U. S., 217; Wilson v. Gaines, 103 Ib., 417, and Trask v. Maguire, 18 Wall., 391*, held that the immunity from taxation conceded to the Alabama and Florida Railroad Company was personal to that corporation; and that it had not became vested in the Louisville and Nashville Railroad Company.

But the court say that there was another and deeper reason why the claim for exemption could not be maintained.

It was quite true that the act of February 27, 1877, did purport to grant to the Pensacola Railroad Company the same immunity from taxation that had been conceded to the Pensacola and Louisville Railroad Company, just as was provided for in cases of consolidation by the forty-third section of our act of July 23, 1868.

But in the meantime in Florida, just as in Arkansas, a new Constitution had been adopted, in 1868, laying a res-

triction upon legislative action, declaring that the property of all corporations should be subject to taxation, excepting only property held for religious, educational, or charitable purposes. The court reaffirmed *Shields v. Ohio*, and declared "that in cases of corporations created by consolidation, the powers of the new company did not pass to it by transmission from its constituents, but resulted from a new legislative grant, that could not transcend the constitutional authority existing at the time it took effect."

The court farther said:

"It does not weaken this conclusion to say that the exemption contained in the internal improvement act of 1855 was authorized by the Constitution of the State then in force, which may be admitted; and that it was assignable in its nature and by its terms in such manner that it became impressed upon the property itself, into whosoever hands it might afterwards come, following the title like an easement or covenant running with the land, which we have shown, however, not to be the case; for, even on that supposition, the privilege is one that must be exercised by some person capable in law of accepting and exercising it. The grant is to a person in respect of a thing, and it is said to inhere in or be attached to the thing only when by its terms the grant is assignable by a conveyance of the thing, and passes as an incident with the title to each successor. There must always be a person capable not only of receiving the title, but also of accepting the conditions accompanying it, and which constitute the exemption; otherwise the conditions becomes impossible and void.

"After the adoption of the Constitution of Florida of 1868, there could be no corporation created capable in law of accepting and enjoying such an exemption, for that was prohibited by the coustitutional provisions that have been cited. In the case of the Pensacola and Louisville Railroad Company, in 1872, the capacity at that time to receive this privilege depended altogether upon the Legislative act amending its charter to that effect; and if any doubt as to this might be reasonably entertained, certainly none can arise as to the Pensacola Railroad Company, which derived all its powers and its very existence from legislation dependant for its vailidity wholly upon the Constitution of 1868. The prohibition which forbids the legislature from exempting the property of railroad corportions from taxation makes it impossible for the Legislature to create such a corporation capable in law of acquiring and holding property free from liability to taxation."

It is needless to dwell on the subject further. It must be perfectly obvious:

1. That there was no authority to consolidate granted in the charter of the Cairo and Fulton Railroad Company.

2. That conceding for argument's sake that the power was granted in the charter, it could, by the express terms of that instrument, only be exercised before the completion of the road, and with a view to that end.

3. That the transmissibility of the exemption from taxation must depend not only on the power of the Cairo and Fulton Railroad company, but also upon the capacity

of another company to acquire that immunity. Admitting everything contended for by the plaintiff, which would be an unparalelled concession, its suit must still fail, for under the Constitution of 1868, in force when the consolidation took place, no corporation could be created with a capacity for acquiring the alleged exemption; as was decided in the case last cited.

It may be added that the present Constitution of Arkansas, adopted Oct. 30, 1873, contains the following provisions:

"Corporations may be formed under general laws; which laws may, from time to time, be altered or repealed. The General Assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any that may be hereafter created, whenever, in their opinion, it may be injurious to the citizens of this State; in such manner, however, that no injustice shall be done to the corporators."

Const. 1874, Art. 12, Sec. 6.

"The power to tax corporations or corporate property shall not be surrendered or suspended, by any contract or grant to which the State may be a party."

Id., Art. 16, Sec. 7.

VI.

AS TO THE COST OF CONSTRUCTION AND THE EARNINGS OF THE ROAD.

This is not a federal question.

But admitting that we are wrong in all the foregoing propositions the result will still be the same.

The ten per cent. per annum mentioned in the charter of the Cairo and Fulton Railroad Company relates to "the amount invested in building and equipping it."

St. Louis R. R. Co. v. Loftin, 30 Ark., 710.

The plaintiff did not offer any admissible evidence of the cost of construction and equipment. It did not even offer its books, If it had done so, they could not be regarded.

Burt v. Byers, 10 Ark., 398.
State Bank v. Barber, 12 Ib., 775.
State Bank v. Fowler, 14 Ib., 160.
Sessions v. Peay, 19 Ib., 266.

Estimates made up at second hand from the books by plaintiff's accountant are still worse.

These estimates are somewhat wonderful. The plaintiff's Auditor says: "The books show a cost of construction and equipment of the Cairo and Fulton Road, up to the date of construction, which was May 1,1874, as accepted, as $23,157,000.62."

The cost seems to have a power of expansion to meet

the exigency of the case. In the Loftin case above cited, *30 Ark., 698*, the same plaintiff stated that "the total cost of said railroad and equipments was about $11,157,000." Now, in some mysterious way, it is more than doubled. According to this sliding scale what hope is there that the road will ever pay the requisite ten per cent? If the books of the company are to be regarded as the final resort, it is clear that the plaintiff possesses an exemption that will never expire. The road is either taxable now or it never will be. As was said in the Loftin case: "A question of more importance to the future prosperity of the State, or one in which the burden of the support of the State Government could be more inequitably distributed, has rarely, if ever before, been presented for the consideration of any Court."

As the testimony of the plaintiff was inadmissible, it was not necessary to move to exclude it, as it can not be supposed to have any effect on the mind of the Chancellor.

Nicks v. Rector, 4 Ark., 277.
Barraque v. Price, 9 Ib., 548.
Hardy v. Heard, 15 Ib., 189.

The only testimony in the transcript as to the cost of the building and equipping of the road, is that of George W. Hughes, and that is clear and explicit.

This witness was fifty-three years old at the time of testifying; had been a civil engineer for the most of his life, and had been engaged in surveying and building railroads in this State. He located the Cairo and Fulton Railroad

from the Missouri State line to Red River, and was on the preliminary survey of that road in 1852, 1853 and 1854, from Cairo to Texas. He was acquainted with the cost and construction of railroads in this State, and had had the management of the Little Rock and Fort Smith Railway and the Little Rock, Mississippi River and Texas Railway, and had been a division engineer of the Cairo and Fulton Railroad Company, and, acting in that capacity, he had made estimates of the cost of constructing those roads. He had made an estimate of the cost of constructing the whole of the Cairo and Fulton Railroad, and believed it was upon that estimate that the contractors made their bids. He made that estimate at the request of the chief engineer, and knows that no other estimate in detail was made. His estimate of the total cost of the road and its equipments is as follows:

305 miles roadway, including station houses, side tracks, tanks, etc., at $20,000 per mile..	$6,100,000
Rolling stock, when road was first operated...	1,067,000
200 miles of ballast, at say, $1,200.....	240,000
	$7,407,500

It seems from the testimony of Mr. Hughes that when the road was first completed some of the bridges and other structures were made of wood. As those were subject to decay, and so doubtless did decay, they have since been replaced by structures of stone and iron. The witness estimates the difference in cost between the wooden and the stone and iron structures as being $305,000. As this dif-

ference is no part of the cost of the original road as it was first completed, it can no more be counted in our present estimate than the difference between the cost of lamps at first used in the stations and electric lights which may have since been introduced, or a difference growing out of any improvement in the road, or its equipments, made since the road was built. But even if we give the plaintiff in error the benefit of this $305,000, making the total cost of the road and its equipments $7,712,500, the result must be the same, as the road at present pays an interest of more than ten per cent. per annum on that amount.

The auditor of the plaintiff in error stated that the net income of the main line in Arkansas for 1882, according to his estimate, was $1,312,612.26 which is much more than ten per cent. interest on $7,712,500.

That the privilege of building branch roads is not attended by any grant of exemption from taxation is, under all known rules of construction, too plain for argument.

But even if we take in the branch roads, and consider them as being as well equipped as the main line, and the whole road as being ballasted, the result is the same. The whole road and branches amounted in 1882 to 403 miles. See exhibit to Warner's deposition.

Now let us apply Mr. Hughes' estimates:

Construction, at $20,000 per mile.....	$8,060,000
Equipment, at $3,500 per mile.....	1,410,500
Ballast, at $1,200 per mile.....	483,600
In all.....	$9,954,100

The net earnings of the road in Arkansas with all of its branches for 1882, were $1,922,675.85, which is very largely over ten per cent. on $9,954,100. And these facts are shown by the auditor of the plaintiff in error and its own witness.

Thus it is clearly demonstrated that the exemption claimed has long since ceased. Undoubtedly the plaintiff never had any exemption; but if it ever had, then it is shown by unquestioned testimony, a most material part of which is supplied by the plaintiff's own witness, its chief accounting officer, that its prosperity has outgrown the supposed exemption. Rarely can any litigated case be rendered so plain upon every point.

VII.

As the decision in the State Court was based on the ground that the earnings of the road exceeded ten per cent. of the cost of construction, as well as the ground that the immunity from taxation was lost by the consolidation, and the former is not a federal question, it is apparent that the decree in the State Court could have been decided without noticing the federal question at all. The decree was based on both grounds.

The writ of error in this case must therefore be dismissed for want of jurisdiction.

Brown v. Atwell, 92 U. S., 327.

Klinger v. State of Missouri, 13 Wall., 257.

Since writing the above we have read the brief filed for

plaintiff in error, but we do not deem it necessary to protract this argument. *Zimmer v. State* decided nothing, and could decide nothing, touching the points involved in this litigation. They were expressly excluded from that case by agreement of counsel. (Record, 148.) We are not concerned to know whether the present organization of the plaintiff company is in accordance with law or not. If the State should sue out a *quo warranto*, then that question might be raised. The argument of counsel for plaintiff in error seems to be based on transcendental interpretations of various decisions made by the courts, and on a printer's blunder, which a child could detect. Considering the well-known stringency of the rule under discussion, this is perhaps the most attenuated thread ever suspended before the judicial vision. We have not recurred "to ancient, altered and erased manuscripts." Any one can see at a glance that the period in the 10th section of the charter, which in the brief for plaintiff is placed after the word "affairs," should have been placed after the word "road" in the second succeeding line.

We will beg leave to refer to the case of the *Memphis and Little Rock Railroad Company v. Berry et al.*, decided at this term of the court.

Respectfully,

U. M. ROSE,

For Defendants in error.